

Senate Judiciary & Rules Committee

Minutes
2008



MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 9, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: Chairman Darrington called the meeting to order at 1:43 p.m.

RS17448 Relating to Custody of the Jury During Trial

Michael Henderson, Legal Counsel for the Supreme Court, explained RS17448 will remove the uncertainty of whether or not a judge is required to sequester the jury in first-degree murder cases when the state has not filed a notice of intent to seek the death penalty or has withdrawn such notice.

MOTION: **Senator Davis** made the motion to send RS17448 to print. **Senator Jorgenson** seconded the motion. The motion was carried by **voice vote**.

RS17449 Relating to Defenses to a Charge of Theft of Property

Michael Henderson explained that RS17449 will correct a statutory provision relating to defenses to a charge of theft of property. This legislation changes the phrase "the accused" to "such other person" and restores the original meaning of this provision.

MOTION: **Senator Jorgenson** made the motion to send RS17449 to print. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS17454 Relating to the Assignment of Justice Pro Tempore to Supreme Court

Michael Henderson explained RS17454 will clarify the method of filing temporary vacancies on the Supreme Court due to absence, disability disqualification, or when the Governor has not yet filled a vacancy on the Court. This legislation also defines which individuals qualify to fill such a vacancy and will also combine all of the statutes together pertaining to this issue.

Senator Davis asked if the committee should repeal the other statutes pertaining to this legislation. **Mr. Henderson** responded “no.”

MOTION: **Senator Davis** made a motion to send RS17454 to print. The motion was seconded by **Senator Jorgenson** and carried by **voice vote**.

RS17461 **Relating to the Magistrate Division of the District Courts, Judge Membership and Commissions**

Michael Henderson explained this legislation will provide the magistrate judge member of each commission, which currently has no vote, to become a voting member. He said the trial court administrator would become the secretary of the commission and keeping duplicate minutes would be eliminated. He stated that if an attorney member’s law partner was a magistrate candidate within the previous five years then the attorney member would be temporarily disqualified from service. **Senator Davis** asked if it was the same standard for a magistrate judge that has an applicant that was a former law partner. **Mr. Henderson** responded that they have not considered that point. He stated that the bill eliminates an obsolete provision giving the commission the duty to recommend the salaries of magistrate judges. It was also noted that the legislation had been circulated among the Association of Counties.

MOTION: A motion was made by **Senator Davis** to return RS17461 to the sponsor to extend the disqualifying provision to magistrate judge members of the commission. **Senator Richardson** seconded the motion, and it was carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Richardson** to conduct the Rules Review.

PENDING RULE **Division of Veterans Services**

Docket No. Rules Governing Admission, Residency, and Maintenance Charges in
21-0101-0701 Idaho State Veterans Homes and Division

Jim Adams, Administrative Support Manager, described that the docket implements changes to the language in order to clarify the existing rule sections. He explained that the proposed changes will provide definitions of previously undefined terms; clarify definitions; provide increased detail on the basis for discharge from a veterans home; and, revise the look back period for disposal of assets to match federal program requirements.

MOTION: **Senator Davis** moved to hold this for review. **Senator Jorgenson** seconded the motion. The docket will be reviewed at the next meeting.

TEMPORARY **Board of Certified Shorthand Reporters**
RULE

Docket No. Rules of Procedure of the Idaho Certified Shorthand Reporters Board

49-0101-0701 **Tana Cory**, Bureau Chief of Occupational Licenses, explained the docket was necessary to make a technical correction to the Idaho Code citation regarding the Board's authority and to provide the current address, telephone and facsimile number and web address for the Board.

MOTION: **Senator Davis** moved to adopt Docket No. 49-0101-0701. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT Chairman Darrington adjourned the meeting at 2:11 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 11, 2008

TIME: 1:35 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Senators Davis, Lodge, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson and Senators Jorgenson and Burkett.

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:30 p.m.

RS17437 Relating to Exhibitions of Dogfights

Senator Little explained RS17437 will change the penalty for dog fighting from a misdemeanor to a felony.

MOTION: **Senator Davis** moved to send RS17437 to print. **Senator Kelly** seconded the motion and it was carried by **voice vote**.

RS17455 Relating to Mediation

Rex Blackburn, Uniform Law Commissioner, explained RS17455 under the Uniform Mediation Act will provide rules for non-judicial mediation that are uniform with recent rules adopted by the Idaho Supreme Court.

MOTION: **Senator Davis** moved to send RS17455 to print. **Senator Lodge** seconded the motion and it was carried by **voice vote**.

RS17471C1 Relating to the Idaho Entity Transaction Act

Mr. Blackburn explained RS17471C1 facilitates a conversion from one entity to another, and it is only a clarification not a change.

MOTION: **Senator Kelly** moved to send RS17471C1 to print. **Senator Davis** seconded the motion and it was carried by **voice vote**.

RS17444 Relating to children; Court Guidelines

Mr. Blackburn explained RS17444 will make rules uniform and enforceable from state to state. It will also help prevent child abductions.

MOTION: **Senator Davis** moved to send RS17444 to print. **Senator Lodge** seconded the motion and it was carried by **voice vote**.

Senator Darrington thanked the Commissioners for the hard work they contribute throughout the year.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 1:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 14, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly.

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

DOCKET NO. 21-0101-0701 Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.

MOTION: **Senator Kelly** made a motion to accept Docket No. 21-0101-0701 relating to the **Division of Veterans Services**. **Senator Lodge** seconded the motion. The motion carried with a **voice vote**.

RS 17474 **Relating to Search and Rescue**. **Michael J. Kane**, representing the Idaho Sheriff's Association, explained RS17474 moves the search and rescue function to the section of code dealing with sheriffs' duties. It also clarifies the procedure of aerial searches.

Senator Darrington clarified this bill makes our law conform to present practice, with few exceptions. **Mr. Kane** responded yes.

MOTION: **Senator Hill** made a motion to send RS 17474 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 17482 **Relating to Misuse of Public Funds**. **Senator Kelly** explained RS17482 amends Title 18, chapter 57 of the *Idaho Code* and includes all state and local officers and employees. It sets out misdemeanor and felony penalties and adjusts the statute of limitations for claims of violations of misuse of public funds.

Senator Jorgenson asked how it would deal with persons that are acquainted as opposed to employees or elected officials. **Senator Kelly** stated the definition includes appointed officials.

Senator Davis asked to clarify if misuse of credit card funds would be defined as public money. **Senator Kelly** advised that a change was made a few years ago to update the language to include current financial systems.

MOTION: **Senator Jorgenson** made a motion to send RS 17482 to print. **Senator**

Hill seconded the motion. The motion carried by **voice vote**.

RS 17472 **Relating to Cruelty to Animals.** **Senator Kelly** explained RS17472 would clarify that the statute's provisions apply to persons who are not the animal's owner.

Senator Davis asked if the rewriting would include making it a felony for certain cruelty. **Senator Kelly** responded, no, to do that the current penalties in place would need to be reviewed.

MOTION: **Senator Lodge** made a motion to send RS 17472 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 17451 **Relating to the Court of Appeals.** **Patti Tobias**, Administrator for the Supreme Court, explained RS17451 would add a fourth judge to the Idaho Court of Appeals due to the increase of appeals. This would improve efficiency and timeliness in the resolution of appeals.

MOTION: **Senator Burkett** made a motion to send RS17451 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

RS 17452 **Relating To the Court of Appeals.** **Ms. Tobias** explained RS17452 will remove the requirement that the State Law Library be located in either the State Capitol or the Supreme Court building. Also included is an emergency clause permitting the move of the Library and the remodeling and use of the current facility.

Senator Burkett asked where the new library would be located. **Ms. Tobias** said they were looking for space, but were going to try to keep it in close proximity to its current location. **Chairman Darrington** stated study money is provided in the permanent building fund.

MOTION: **Senator Davis** made a motion to send RS17452 to print. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS 17459 **Relating to Salaries and District Court Reporters.** **Ms. Tobias** explained RS17459 would have the Supreme Court rather than the Chief Justice establish the personnel plans for court reporters. The bill removes language requiring a court reporter to take an oath that the prepared transcripts have been served in the proper order.

Senator Richardson asked if the Supreme Court decides on the starting salary. **Ms. Tobias** stated the base salary has been decided by appropriations, but can be reviewed if a court reporter has had significant experience from another state. **Senator Richardson** asked if the Supreme Court stipulated anything beyond a starting salary. **Ms. Tobias** answered, "yes", and it is consistent with current practice. **Senator Davis** asked if this rule goes into effect in March, does there need to be an emergency clause from March to June? **Ms. Tobias** responded that they would be fine during that time period.

MOTION: **Senator Davis** made a motion to send RS17459 to print. **Senator Jorgenson** seconded the motion. The motion was carried by **voice vote**.

RULES: **Rules Review-Idaho State Police.**

**Docket No.
11-0701-0701**

Rules Governing Motor Vehicles. Vice Chairman Richardson introduced **Lt. Bill Reese** and asked if the necessary hearing had been held and if there had been any objections. **Lt. Reese** stated there had been no objections to any of the changes. **Vice Chairman Richardson** asked if the Director of Idaho State Police is authorized to give interpretations of terms, and if those interpretations become law. **Lt. Reese** stated that they would have the same effect of law based on the rule and how it is applied.

Senator Davis stated that a department or agency should not be able to provide their own interpretation of a rule and then have it become effective as law. **Lt. Reese** stated that rules are pretty vague, and they try to use actual case law to interpret what it means. **Senator Davis** stated that individuals with a singular point of view are interpreting the law, and asked how are the courts to handle these laws? **Vice Chairman Richardson** stated he has concern as well. **Chairman Darrington** asked if the decision of the department's interpretation of the rule be subject to interpretation in a court of law, and if so, would it be whether or not the Director has the authority of the interpretation or would it be on the basis that he made the interpretation? **Lt. Reese** did not have an answer and would have to defer to the Deputy Attorney General. **Chairman Darrington** then stated that if it was according to the basis that he made his decision that was appealable and interpreted by the court then he would not have such a hard time with the rule. **Lt. Reese** stated that the rules are the standard that support Title 49, Chapter 9, of the *Idaho Code of Law* and was unsure how it would be viewed by the courts.

Senator Jorgenson asked about the process on rule 2. **Vice Chairman Richardson** stated that it would have to be voted on, and if it is not passed, it would go back to the old form until it is heard again. **Chairman Darrington** stated that a pending rule can only be disallowed by a resolution. **Senator Kelly** stated that a number of agencies have the authority to adopt policy similar to this rule.

Lt. Reese then continued going through the docket. **Senator Davis** addressed Page 81, Rule 9-19, stating the way it is written gives the Federal Government the authority to amend the Administrative Procedures Act but, then it does not give the right to review. It should be more consistent with the bottom of Page 82 where Lt. Reese cites the Society of Automotive Engineers and he states the 2006 edition. **Senator Jorgenson** asked Lt. Reese what the motivation was to add the SAE standards on Page 82, Rule 20. **Lt. Reese** said it is the current National Standard for wiring and lighting on vehicles.

Senator Burkett then asked what was the purpose to delete language on Page 81? **Lt. Reese** stated that language had been moved into Rule 20, 30, and 40 based on who the body is that sets that regulation or standard.

Senator Davis asked for unanimous consent that Docket No. 11-0701-0701 be held for future vote by the committee at the discretion of Chairman Darrington. There were no objections, therefore it was **so ordered**, and will be dealt with on Friday.

**DOCKET NO.
11-1101-0701**

Rules of the Idaho Peace Officer, Standards and Training Council. **Jeff Black**, Executive Director, explained the docket had gone through the necessary hearings, and councils. The most significant changes allow Peace Officers to keep their certification if they have to work in a Tribal location.

Senator Jorgenson asked if it recognized a post certified officer as a peace officer. **Mr. Black** responded it would.

Mr. Black continued with the next significant change on Page 114 in the Docket, is removing limitations and college credits. It previously penalized officers who received credits via the computer, now it is between the student and the accredited university. **Senator Hill** clarified that full credit was received from classes achieved via the computer, however, only half of their classes could be from that source.

Senator Jorgenson stated extending the certification to Peace Officers working as a Tribal Officer is the most important change.

MOTION:

Senator Jorgenson made a motion to accept Docket No. 11-1101-0701. **Senator Kelly** seconded the motion. The motion was carried by **voice vote**.

**DOCKET NO.
11-1104-0701**

Rules of the Idaho Peace Officer, Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. **Jeff Black**, Executive Director, explained the issues and the minor changes. The most significant issue was adding qualification requirements for probation and parole officers who carry firearms as part of their duty.

Senator Burkett asked if there is a way for disabled veterans to attain post certification. **Mr. Black** responded, "yes", they do allow them to pursue their career.

MOTION:

Senator Kelly made a motion for the committee to approve Docket No 11-1104-0701. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:40 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 16, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:33 p.m.

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of January 9, 2008 as written. **Senator Richardson** seconded the motion and the motion carried by **voice vote**.

Senator McKague made a motion to approve the minutes of January 11, 2008 as written. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.

RS17461C1 **Relating to the Magistrate Division of the District Court. Michael Henderson**, Legal Counsel for the Supreme Court, explained that a revision was made at the request of Senator Davis to extend the disqualifying provision to magistrate judge members of the commission.

MOTION: **Senator Kelly** made a motion to send RS17461C1 to print. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

RS17323 **Relating to Juveniles. Larry Callicutt**, Director of Juvenile Corrections, explained RS17323 would clarify the current language that the opinions of the Custody Review Board are determinations.

MOTION: **Senator Hill** made a motion to send RS17323 to print. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

RULES: **Rules Review-Department of Juvenile Corrections.**

DOCKET NO. 05-0101-0701 **Rules for Contract Providers. Vice Chairman Richardson** introduced Nancy Bishop, from the Deputy Attorney General's office. **Vice Chairman Richardson** asked Ms. Bishop if the proper hearings had been held with the contract providers or state holders. **Ms. Bishop** stated there were no objections.

Senator Hill asked what if the guidelines are not met? **Ms. Bishop** stated if they are not in compliance then they would not receive funding.

Vice Chairman Richardson asked if the students in the Department of Correction were taking applicable classes that would transfer into a School District? **Ms. Bishop** stated the classes are applicable and transfer, however the Department has had some difficulty transferring juveniles transcripts and this legislation would help streamline that process.

Senator Hill asked if the Department of Juvenile Corrections (DJC) knew why it is difficult getting the grades, and would the providers be able to comply without undue hardship. **Ms. Bishop** stated she was not aware of any hardship that it would place on the providers, but rather would make it easier.

Ms. Bishop explained that if a provider has juveniles from their custody or not from their custody, they must notify DJC even if none of their juveniles were involved in an incident.

Vice Chairman Richardson asked if they are seeing more gang activity and involvement in the centers? **Ms. Bishop** deferred the question to **Larry Callicutt**, Director of Juvenile Corrections. **Mr. Callicutt** stated that they use aggression replacement therapy in order to rid the juveniles of certain behaviors and replace those behaviors with a proper value system.

MOTION:

Senator Lodge made a motion to accept Docket No. 05-0101-0701. **Senator Hill** seconded the motion. The motion was carried by **voice vote**.

**DOCKET NO.
05-0102-0701**

Rules and Standards for Secure Juvenile Detention Centers. **Ms. Bishop** explained changes were made to correct rule language to match the statute-*IDJC issues a certificate, not a license, to county juvenile detention centers, and to insert "offender" after "juvenile."*

Senator Hill asked to whom are they certifying what? **Ms. Bishop** responded they are certifying that the rules are followed. **Senator Hill** asked what processes do they follow to make sure they are following the rules in order to make the certification? **Ms. Bishop** stated there is a group of individuals that audit the twelve facilities in the state based on the rules.

MOTION:

Senator Hill made a motion to accept Docket No. 05-0102-0701. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

**DOCKET NO.
05-0103-0701**

Rules of the Custody Review Board (CRB). **Ms. Bishop** explained the significant changes to the Docket. First, all references to "opinion" of the Custody Review Board were changed and are more accurately described as "determinations". Second, rule (101.03) was amended to clarify that the CRB cannot set dates for release. Third, rule (102.01.a) was amended to allow the Director to appoint alternatives, and set their term of appointment for two years. Fourth, rule (300.03) amends the rule to

clarify when and how the CRB members may reconsider a determination.

Senator Davis asked for clarification on the ability of the Director to appoint alternates, and does the statute allow for alternates? Is this beyond the statutory authority? **Ms. Bishop** responded the statute simply states that a juvenile leaves at age nineteen and in order for a juvenile to receive an Extended Time in custody it would need to be reviewed by the CRB. Ms. Bishop then stated that the Board is to be governed by rules, and does not address alternates.

Senator Burkett asked if the Board is an advisory to the Director? **Ms. Bishop** responded, "no," it is binding on the Director. **Senator Burkett** clarified that the Director appoints the Board, but the Board's decision overrides the Director. **Ms. Bishop** stated that was correct and was the purpose and design of the Board.

Senator Davis and Hill, both stated that they should have five board members with no alternate. This will help ensure a quorum is present at the meetings.

Chairman Darrington stated that it should be left as is, it is written within the law and the way it is written is to provide a safety valve.

Larry Callicutt, Director of Juvenile Corrections, stated that having five members on the Board would prove to be beneficial.

MOTION:

Senator Hill made a motion to accept Docket No. 05-0103-0701. **Senator Lodge** seconded the motion.

Senator Davis stated that he would support the motion if the Director would make a temporary rule to change the Board from four to five members with no alternates. **Mr. Callicutt** agreed to look into the legalities of accepting this temporary rule.

Senator Lodge inquired what would be the cost for adding another member to the Board and how much more time would be required for meetings, etc.

Senator Burkett asked can a Board's decision be appealed by a juvenile if they do not agree with the decision? **Ms. Bishop** stated, "no". **Senator Burkett** stated he will support the rule at this point, but it has no statutory support.

The motion was carried by **voice vote**.

PRESENTATION

Department of Juvenile Corrections Update by Larry Callicutt, Director of Juvenile Corrections.

Senator Jorgenson asked if first time offenders are given a psychiatric evaluation upon entering the facility? **Mr. Callicutt** stated they go through a comprehensive test.

Senator Jorgenson asked if the juveniles "act out" in order to stay in the facility, and does the Juvenile Corrections have a place for juveniles to go

if they do not want to go back to their previous environment or an emancipation law? **Mr. Callicutt** stated there are juveniles that “sabotage” their treatment. Currently, there is no other place for the juveniles to go after their treatment besides a group home, however, there is an Emancipation Law for juveniles older than seventeen and a half.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:53 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 18, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly.

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: See attached sign-in sheet

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

RS 17318 **Relating to Judgments.** **Brent Reinke**, Director of the Department of Corrections explained RS17318 allows the Idaho Department of Correction (IDOC) to recover a portion of the cost involved in the preparation of Pre-sentence Investigation (PSI) reports. Each defendant would pay a \$150 PSI fee. In doing so, the IDOC expects to potentially generate \$569,000 in FY09.

Chairman Darrington asked if there would be an issue of collectibility. **Mr. Reinke** stated they would be able to collect on 67% of the defendants on parole/probation.

Senator Richardson asked what if the defendants do not have the money to pay the \$150 fee? **Mr. Reinke** responded the defendants could pay five or ten dollars a month in order to pay off the fee.

MOTION: **Senator Lodge** moved to print RS17318. **Senator Kelly** seconded the motion. The motion was carried by **voice vote**.

RS 17320 **Relating to Honorariums and Expenses.** **Mr. Reinke** explained RS17320 would increase the Board's current compensation from \$50 per day to \$150 per day.

Chairman Darrington asked if this rate would apply to formal meetings, a requested meeting by the Director, or any meeting pertaining to the Department of Corrections? **Mr. Reinke** responded any board meeting referring to corrections would receive reimbursement.

Senator Jorgenson asked if the increase in the fiscal note was per board member or aggregate. **Mr. Reinke** responded the aggregate.

MOTION: **Senator Davis** moved to print RS17320. **Senator Hill** seconded the motion. The motion was carried by **voice vote**.

RS 17630 **Relating to Law Enforcement.** **Larry Callicutt**, with the Department of

Juvenile Corrections explained RS17630 would make it clear that sexual contact between any person, including juveniles, on felony parole or felony probation and any employee of the IDOC who supervises such persons is a felony.

MOTION: **Senator Davis** moved to print RS17630. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS 17586 **Relating to Medical Costs of State Prisoners Housed in Correctional Facilities.** **Mr. Reinke** explained in RS17586 that the Board of correction shall pay for medical services for prisoners, including juvenile offenders, committed to the custody of the Department of Correction.

Senator Kelly asked if the procedure is different for taking care of juvenile's medical costs. **Mr. Reinke** explained juveniles would continue to be cared for in the same manner they are now, this is just a clarification. **Senator Kelly** asked how the medical needs of the juveniles is handled, and is it a similar scheme as other individuals admitted? **Mr. Reinke** responded it is a very similar scheme and the needs are being met.

MOTION: **Senator Jorgenson** moved to print RS17586. **Senator Richardson** seconded the motion. The motion was carried by **voice vote**.

RS 17319 **Relating to Parole.** **Olivia Craven**, Director of the Commission of Pardons and Parole, explained RS17319 would allow the Commission of Pardons and Parole to release offenders onto parole on the last business day prior to their parole eligibility date, when that date falls on a Saturday, Sunday or legal holiday.

MOTION: **Senator Jorgenson** moved to print RS17319. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

DOCKET NO.
11-0701-0701 **Committee Vote on Rules of the Idaho State Police(ISP). Rules Governing Motor Vehicles.** **Chairman Darrington** stated that **Senator Davis** met with the ISP and it was agreed to approve the rule today, however, Docket No. 11-0701-0701 would return next year with a rule that satisfies Senator Davis by removing the last sentence of the statement on Page 79, .002 on the written interpretation.

MOTION: **Chairman Darrington** moved to approve Docket No. 11-0701-0701, with the understanding that ISP will come back with a rule by next year that will take care of the aforementioned problem. **Senator Burkett** seconded the motion. The motion was carried by **voice vote**.

DOCKET NO.
06-0101-0701 **Rules Review-Department of Corrections Proclamation.** **Dennis Stevenson** from Legislative Services explained a Proclamation is similar to a "pending" rule. **Chairman Darrington** further explained this rule is to prevent the prisoner or the prisoners family from making the rules.

Lorenzo Washington, Department of Corrections, explained there were housekeeping details made to the Docket and also some significant changes. **Mr. Lorenzo** stated an amendment was necessary to Custody of Evidence in order to clarify that contraband being held by the Department as evidence must be disposed of in accordance with

Department procedure.

Vice Chairman Richardson questioned if a person does not have the right to visit a prisoner. **Mr. Lorenzo** responded that is the correct. **Paul Panther** also from the Department further explained the prison needs a legitimate correctional interest in establishing that regulation.

Senator Hill asked for clarification on volunteers interaction with the inmates. **Dan Copeland**, Department of Corrections, responded that volunteers cannot be on the approved offenders list in order to keep business separate from personal involvement.

MOTION: **Senator Hill** moved to approve Docket No. 06-0101-0701. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

PRESENTATION **Criminal Justice Commission. Brent Reinke**, Chairman of the Criminal Justice Commission, introduced Greg Sali and Mr. Sali passed out the IDOC Annual Statistical Report for the Fiscal Year 2007.

Mr. Reinke discussed the following points:

- Development of alternatives to incarceration for juveniles and adults.
- Implementation of the Sex Offender Registration and Notification Act (formerly Adam Walsh) and full review of Idaho's sex offender registry.
- Development of evidence-based programs in the management of incarcerated adults and juveniles.
- IdahoVINE Hotline for offender information.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 21, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Senators Davis, Lodge, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson, Senators Jorgenson and Burkett

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:33 p.m.

RS17500 **Relating to Non Probate Transfers; Survivorship.** **Bob Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained this bill will allow spouses to pass property at the death of the first to die spouse without a probate or summary administration, while keeping the community property status of the property clear.

MOTION: **Senator Davis** made a motion to send RS17500 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS17503 **Relating to Appointment of Conservators.** **Mr. Aldridge** explained this bill provides for the ability of a person to make a nomination of a conservator within a financial power of attorney and clarifies various other situations such as multiple financial powers.

MOTION: **Senator Hill** made a motion to send RS17503 to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS17504 **Relating to Foreign Guardianships and Conservatorships.** **Mr. Aldridge** explained this bill provides procedures to transfer foreign guardianship or conservatorship to or from Idaho for developmentally disabled persons.

Senator Davis asked why "ward" wasn't recognized by the court? **Mr. Aldridge** stated that while "ward" was the term used in the Probate Code, the term was not used in the Developmentally Disabled Statutes.

MOTION: **Senator Kelly** made a motion to send RS17504 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

- RS17507** **Relating to Protection of Persons Under Disability.** Mr. Aldridge explained that Idaho law currently provides that a convicted felon should not be appointed guardian of an incapacitated person unless the court finds that such appointment is in the best interest of the incapacitated person. This bill provides court discretion and authority to conduct a criminal background check of the proposed guardian or any person who resides at or frequents the proposed residence of the incapacitated person. If there is a felon that resides or frequents the proposed residence, the Court can then determine whether the appointment of the guardian is appropriate.
- MOTION:** **Senator Kelly** made a motion to send RS17507 to print. **Senator Lodge** seconded the motion, The motion carried by **voice vote**.
- RS17510** **Relating to Formal Testacy Proceedings.** Mr. Aldridge stated this bill removed a notice by publication requirement which is redundant and made technical corrections.
- MOTION:** **Senator Hill** made a motion to send RS17510 to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.
- RS17511** **Relating to Exempt Property and Allowances.** Mr. Aldridge explained this bill, done in consultation with Medicaid Estate Recovery as to Medicaid issues, restructures the allowances for surviving spouses and children. He continued to explain that the homestead allowance and existing family allowance in their present form are both deleted and replaced with a family allowance which is only used when the estate is unable to pay its debts, and cannot make any distribution to a surviving spouse or minor or dependent disabled children. In that event, the amount of the net assets of the estate, or \$100,000, whichever is less, becomes the family allowance. The bill also limits exempt property to certain types of tangible personal property without any cash allowances and makes technical corrections.
- Senator Davis** commented that this would be a major shift in how this had been done in the past.
- MOTION:** **Senator Davis** made a motion to send RS17511 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- RS17514** **Relating to Exempt Property and Allowances.** Mr Aldridge explained this was a companion bill to RS17511, a more comprehensive amendment of the probate allowances. He said this bill contains only the exempt property allowance provisions in case the more comprehensive bill is not enacted.
- MOTION:** **Senator Kelly** made a motion to send RS17514 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- RS17556** **Relating to Public Assistance.** Mr. Aldridge stated that the Department of Health & Welfare is currently in negotiated rulemaking and other negotiations regarding rules for Medicaid. This bill simply allows the rule to be changed, but does not mandate the change.
- MOTION:** **Senator Kelly** made a motion to send RS17556 to print. **Senator Lodge**

seconded the motion. The motion carried by **voice vote**.

RS17515

Relating to Notice in Probate Proceedings. **Mr. Aldridge** stated that the Idaho Probate Code requirements for publication of notice have always been interpreted to require such publication in a newspaper of "general circulation." In 1994, the *Idaho Code*, Section 60-106, was amended and stated the use of "newspaper of general circulation" meant the newspaper with the largest paid circulation in the county. **Mr. Aldridge** explained that to guarantee that the method of publication practiced under the probate code consistently for many decades will not be brought into question, this bill amends the notice provisions to clearly state the term "general interest" rather than "general circulation."

Senator Davis said he had no problem with the certainty issue, but was concerned about legislation when there is an ongoing legal action. He said further that the Supreme Court could make the decision. **Mr. Aldridge** said he was attempting to create certainty regarding their duty rather than waiting for a Supreme Court decision.

MOTION:

Senator Davis made a motion to send RS17515 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS17519

Relating to Wills. **Mr. Aldridge** stated that this bill incorporates methods for signing and notarizing documents when the signer was either illiterate or unable physically to sign a Will.

MOTION:

Senator Davis made a motion to send RS17519 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS17520

Relating to Real and Personal Property. **Mr. Aldridge** explained that currently Idaho does not have a Rule Against Perpetuities, but instead has the Rule against the Suspension of Power of Alienation as to certain property for a longer period than the lives of the persons in being at the creation of the limitation, and 25 years thereafter. He said this bill first clarifies that Idaho does not have a Rule Against Perpetuities. He added that second the bill makes technical amendments to the Rule Against the Suspension of Power of Alienation to clarify when the period starts and to eliminate a potential tax trap when powers of appointment are used.

MOTION:

Senator Davis made a motion to send RS17520 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Darrington asked **Mr. Aldridge** if he expected any controversy on this bill. **Mr. Aldridge** said he did not.

RS17558

Relating to the Uniform Power of Attorney Act. **Mr. Aldridge** explained that this Act provides a simple way for people to deal with their property by providing a power of attorney, which can be used in case of future incapacity or if the principal is unavailable. He stated that while it was mainly a set of default rules, the act also contained safeguards for the protection of the principal.

MOTION:

Senator Hill made a motion to send RS17558 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS17571

Relating to the Intellectual Property Power of Attorney Act. **Mr. Aldridge** explained this bill makes clear guidelines and powers of the intellectual property power of attorney.

Senator Davis asked if the National Uniform Laws Committee had addressed this in the Uniform Power of Attorney Act. **Mr. Aldridge** responded that it had not.

MOTION:

Senator Lodge made a motion to send RS17571 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

There being no more business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 23, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly.

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: See attached sign-in sheet.

CONVENED: Chairman Darrington called the meeting to order at 1:35 p.m.

MINUTES: **Senator McKague** made a motion to accept the minutes of January 14, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Richardson made a motion to accept the minutes of January 16, 2008 as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS17646 **Relating to Misuse of Public Funds.** **Michael J. Kane**, explained RS17646 will authorize a sentencing court to order a person found guilty of misuse of public funds to make restitution to public entity or its insurer, in its discretion, order the person to use his or her retirement funds, unless other funds are available to make restitution.

MOTION: **Senator Lodge** moved to send RS17646 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1246 **Relating to Custody of the Jury During Trial.** **Michael Henderson**, Legal Counsel for the Supreme Court, explained S1246 will remove the uncertainty of whether or not a judge is required to sequester the jury in first-degree murder cases when the state has not filed a notice of intent to seek the death penalty or has withdrawn such notice.

Senator Darrington clarified that a judge would still have the authority for sequestration in non-death penalty cases if he felt the need.

MOTION: **Senator Kelly** made a motion to send S1246 to the Senate Floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1247 **Relating to Defenses to a charge of Theft of Property.** **Mr. Henderson** explained that S1247 will correct the statutes as they were revised in 1981. The word "him" was changed to "the accused", which changed the meaning of the provision. This bill would correct this error by

changing "the accused," to "such other person" and restore the original meaning of this provision.

MOTION: **Senator Hill** made a motion to send S1247 to the Senate Floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1248 **Relating to Assignment of Justice Pro Tempore to Supreme Court.** **Mr. Henderson** explained S1248 will clarify the method of filling temporary vacancies on the Supreme Court due to absence, disability, disqualification, or when the Governor has not yet filled a vacancy on the Court. S1248 also defines which individuals qualify to fill such a vacancy. This bill will combine all of the statutes together pertaining to this issue.

MOTION: **Senator Lodge** made a motion to send S1248 to the Senate Floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1288 **Relating to the Magistrate Division of the District Court; Commissions.** **Michael Henderson** explained S1288 will provide the magistrate judge member of each commission, which currently has no vote, to become a voting member. The trial court administrator would become the secretary of the commission and keeping duplicate minutes would be eliminated. If an attorney member's law partner was a magistrate candidate within the previous five years then the attorney member would be temporarily disqualified from serving. The bill eliminates an obsolete provision giving the commission the duty to recommend the salaries of magistrate judges.

MOTION: **Senator Jorgenson** made a motion to send S1288 to the Senate Floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S 1270 **Relating to the Court of Appeals.** **Patti Tobias**, Administrator for the Supreme Court, explained S1270 would add a fourth judge to the Idaho Court of Appeals due to the increase of appeals. This would improve efficiency and timeliness in the resolution of appeals.

Former Supreme Court Justice Linda Copple Trout testified that the Task Force on Court of Appeals recommended adding an additional judge immediately to maintain 100 cases per year per judge. The workload has doubled and will continue to increase due to new crimes and more people.

Senator Hill asked if there was a way to streamline the court process. **Justice Trout** stated adding another judge would help and also not allowing as many time extensions. She also suggested working with court reporters to turn in their manuscripts in a more timely fashion.

Senator Richardson asked if there is or should there be a limit on the number of appeals. **Justice Trout** stated that all appeals go before the Supreme Court and they decide whether or not an appeal would be granted.

Senator Kelly asked if adding a fourth member would work in a three-panel environment? **Justice Trout** stated that there would be a rotation, allowing one judge member a month of reprieve to get caught up on cases and ongoing appeals. Senator Kelly asked if there were other courts set up this way. Justice Trout stated, "yes."

MOTION: **Senator Richardson** made a motion to send S1270 to the Senate Floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1271 **Relating to the State law Library.** **Ms. Tobias** explained S1271 will remove the requirement that the State Law Library be located in either the State Capitol or the Supreme Court building. Also included is an emergency clause permitting the move of the Library and the remodeling and use of the current facility. She also mentioned that the Court of Appeals hoped to move into the Supreme Court.

Chairman Darrington noted that the Court of Appeals needs to be located in the Supreme Court building for security, for access to all files, for efficiency of court room use, and for the sharing of personnel.

Senator Jorgenson asked why there was no fiscal impact statement. **Ms. Tobias** stated the statute itself removes the requirement for the Library to remain in the State Capitol or the Supreme Court Building. A separate fiscal note has been submitted to JFAC that has also been included in the Governor's budget.

Senator Davis asked if there was high traffic flow in the Library or if the use of the internet slowed down actual usage of the Library. **Ms. Tobias** stated there wasn't as much use, which is why they were downsizing into a smaller building.

MOTION: **Senator Hill** made a motion to send S1271 to the Senate Floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1272 **Relating to salaries and District Court Reporters.** **Ms. Tobias** explained S1272 would have the Supreme Court rather than the Chief Justice establish the personnel plans for court reporters. The bill removes language requiring a court reporter to take an oath that the transcripts have been prepared in the order served.

MOTION: **Senator Jorgenson** made a motion to send S1272 to the Senate Floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

REPORT: **The Prosecution of Child Sexual Abuse.** **Bill von Tagen**, Deputy Attorney General, representing Attorney General Wasden introduced Dr. Bob Marsh, who went over the case numbers for the last year. The number of sexual offenses have declined in the last year. Dr. Marsh then turned the floor over to Dr. Patrick.

Dr. Patrick advised that counties are stricter on sexual registration violations, and some counties are seeing no cases of sexual abuse.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:47 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 25, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Darrington** called the meeting to order at 1:32 p.m.

RS17681 **Relating to Misuse of Public Funds.** **Senator Kelly** explained RS17681 clarifies *Idaho Code* 18-5701, by including within its scope all state and local officers and employees who have access to public funds. It sets out misdemeanor and felony penalties, and adjusts the state of limitations for claims for violations of misuse of public funds.

MOTION: **Senator Hill** moved to print RS17681. **Senator Richardson** seconded the motion. The motion was carried by **voice vote**.

RS17692 **A concurrent resolution stating findings of the Legislature and Authorizing the Lease-Purchase of the Correctional Alternative Placement Program Facility.** **Brent Reinke**, Director of the Department of Corrections, stated RS17692 will authorize the lease-purchase for the correctional alternative placement program facility by the Board of Correction and Division of Public Works. This would be a public/private operation with Management Trainee Corporation (MTC). After twenty years of lease payments the state can purchase the building for one dollar.

Senator Hill wanted to clarify that this was not a net lease that may require the state to pay more. **Mr. Reinke** stated that this is a private/public approach. In the long run the state will save more money.

Senator Hill asked why they want more for a straight lease purchase and if this is a net lease are we committing ourselves to more cost? **Mr. Reinke** referred to Rod Leonard, Program Coordinator for the Idaho Department of Corrections, he responded the obligations are identical and the State would have more control over the building and it would cost less money.

Senator Jorgenson asked if a down payment would be required on a lease purchase? **Mr. Leonard** responded there would only be straight payments, this would be better for tax payments and lower interest rates.

Senator Kelly asked what the estimated life of the building would be? **Mr. Reinke** responded 50 to 70 years.

Senator Kelly asked who owns the property where the new building will be built. **Mr. Leonard** explained MTC will buy the property and construct the building.

Senator Burkett asked what was the tax difference between a lease purchase. **Mr. Leonard** responded they will receive Federal tax benefits. **Joanna Guilfooy**, Deputy Attorney General, Department of Administration, explained the main tax difference is \$433,000 a year. **Senator Burkett** then asked about local taxes. **Ms. Guilfooy** advised they were already built into the lease.

Senator Davis inquired if we would be committed to MTC for the full 20 years if they are an inadequate operator. **Mr. Leonard** responded there are two different contracts one for the facility and one for operation. They would also have the control to replace the operator if they were not performing properly.

Senator Kelly asked for clarification on separate operating contracts. **Mr. Leonard** explained there were clauses to get out of the contract in case there were any difficulties.

Senator Richardson asked who had the control of certain prisoners? Can MTC turn to other contracts? Other states? **Mr. Reinke** responded this building will service the needs of Idaho courts, parole and probation.

Senator Kelly asked why a concurrent resolution was needed in order to act on this new structure. **Mr. Reinke** responded in the private/public partnership it requires the approval of the House and Senate since it is a Capital Lease.

Jim Wrigley, Senior Vice President of Finance with Wells Fargo, explained the concurrent resolution was needed because of the terms put in place by the Internal Revenue Service that will allow the interest rate to be tax-exempt.

Senator Hill asked who was purchasing the land, and if they were purchasing it from the state or a private firm? **Mr. Reinke** responded MTC would purchase the land from a private firm.

Senator Burkett asked what sort of profit parameters MTC would receive? **Mr. Reinke** stated he was unsure of the profit parameters. **Senator Burkett** asked if they would be operating the facility? **Mr. Reinke** stated, "yes."

Senator Kelly asked when was the decision made to make this private? **Mr. Reinke** responded it was approximately a year and half ago. **Senator Kelly** asked if the legislature was involved in that decision? **Mr. Reinke** stated that it was.

Senator Burkett asked if it was a straight lease? **Mr Reinke** responded it was a straight lease.

MOTION: **Senator Hill** moved to print RS17692. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

RS17534 **Relating to the Idaho Uniform Liability Company Act.** **Rex Blackburn**, Uniform Law Commissioner, explained RS17534 is for the purpose of the Idaho Uniform Limited Liability Company Act ("IULLCA") to provide Idaho with modern, updated legislation governing the formation and operation of limited liability companies (LLCs).

Senator Burkett asked how much is uniform and how much is specific to Idaho? **Mr. Blackburn** responded that the majority of it is uniform.

MOTION: **Senator Jorgenson** moved to print RS17534. **Senator Davis** seconded the motion. The motion was carried by **voice vote**.

S 1261 **Relating to Mediation.** **Mr. Blackburn** explained the purpose of S1261 is to provide rules for non-judicial mediations that are uniform with recent rules adopted by the Idaho Supreme Court.

Chairman Darrington asked if severability was a national movement that is in a lot of uniform acts? **Mr. Blackburn** stated it was a standard provision.

Senator Jorgenson asked if it touched on limitations of mediation with respect to discovery depositions? **Mr. Blackburn** stated it does not.

Senator Burkett asked if the mediations were occurring within religious organizations? **Mr. Blackburn** responded they were.

MOTION: **Senator Burkett** made a motion to send S1261 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion was carried by **voice vote**.

S 1262 **Relating to the Idaho Entity Transaction Act.** **Dale Higer**, Uniform Law Commissioner, explained S1262 incorporates changes made to the Model Entity Transactions Act by the National Conference of Commissioners on Uniform State Laws.

Senator Hill asked for clarification on Limited Liability Limited Partnership (LLLP)? **Mr. Higer** responded a LLLP does not have general liability.

MOTION: **Senator Hill** made a motion to send S1262 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion was carried by **voice vote**.

S 1263 **Relating to Children; Cooperation and Communication among Courts.** **Mr. Higer** explained S1263 is a Uniform Child Abduction Prevention Act that provides courts with guidelines to follow during custody disputes and divorce proceedings, to help courts identify families at risk for abduction, and to provide methods to prevent the abduction of children.

Regarding the warrant to take physical custody of a child, section 32-1509 (6), **Senator Darrington** made an observation that the liberal use of the word "may" will facilitate a greater cooperation between the judge and the police agencies.

Senator Richardson asked how the courts identify families at risk for abduction? **Mr. Higer** responded after an award of custody has been granted, if a guardian fails to follow the guidelines of visitation they would be identified as "at risk".

Senator Jorgenson asked if this would apply to abductions state to state or outside of the United States? **Mr. Higer** stated it will apply to the countries that have signed the Hague agreement (civil aspects of international abduction), as well as within the United States.

Senator Burkett asked what is the time frame between the warrant and the court hearing, and if that was left open on purpose? **Mr Higer** stated that it must be heard on the next available day.

MOTION:

Senator Lodge made a motion to send S1263 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:40 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 28, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly.

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Lodge** made a motion to accept the minutes of January 18, 2008 as written. **Senator Hill** seconded the motion. The motion was carried by **voice vote**.

RS17300C1 **Relating to Exemptions from Attachment or Levy. Senator Davis** explained RS17300C1 increases the allowed exemption for a motor vehicle from \$3,000 to \$5,000.

MOTION: **Senator Hill** moved to send RS17300C1 to print. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS17680 **Relating to County Sheriffs. Michael Kane**, Attorney with the Idaho Sheriffs Association, explained RS17680 will clarify that a convicted felon may not run for the office of county sheriff. The bill also requires a newly elected sheriff to seek training sponsored by the Peace Officer Standards and Training Academy (P.O.S.T.) Council and the Idaho Sheriff's Association.

Senator Richardson inquired what if an individual is unable to seek training, and would that preclude them? **Mr. Kane** advised it would not disqualify them; however, if the individual does not complete the training the voters will be aware of the lack of training.

Senator Davis clarified if the county sheriff commits a felony, they would be unable to be re-elected.

MOTION: **Senator Jorgenson** moved to send RS17680 to print. **Senator Kelly** seconded the motion. The motion was carried by **voice vote**.

RS17700 **Relating to False Pretenses and Misrepresentations. Heather Reilly,**

Deputy Prosecuting Attorney, explained RS17700 will clarify the current Identity Theft Law.

MOTION:

Senator Hill moved to send RS17700 to print. **Senator Richardson** seconded the motion. The motion was carried by **voice vote**.

S 1260

Relating to Dog Fighting. **Senator Little** explained S1260 will change the penalty for dog fighting from a misdemeanor to a felony. There are four main reasons to make this change. First, it will change the perception of Idaho since it is one of the last states to make it a felony; second, Idaho will have a greater cooperation with Federal prosecutors; third, extradition; and fourth, the deterrent factor.

Chairman Darrington asked for further explanation of the exceptions on the bottom of the legislation. **Senator Little** explained in certain instances dogs are used for the management of livestock and will protect the livestock from other animals, and any fighting would be considered an unintentional act. **Senator Little** further explained this legislation is for individuals that knowingly advertise, promote, organize, participate or have a monetary interest in a public or private display of combat between two or more dogs.

Senator Lodge stated she has a trained German Shepherd at her home, with signs posted guard dog on duty. If someone came up to her home with their own dog and there was an encounter between the two dogs, would that be considered unintentional? **Senator Little** explained the legislation is targeting dogs that are kept for fighting, killing, maiming or injuring another dog.

Michael Kane, attorney, spoke on behalf of the legislation, reiterating the fact that Idaho is one of two states left that only charges this kind of a crime as a misdemeanor. **Mr. Kane** believes that by raising that to a felony, it will detour individuals from participating in the exhibition of dog fights.

Senator Burkett asked how can an individual that is a spectator not be participating? **Mr. Kane** responded under the criminal law when spectators are clearly identified, that would interpret them to be spectators.

Senator Lodge asked if this would help with the gang problem? **Mr. Kane** responded there is not necessarily a link between the two; however, previous experience from other states has shown that gangs are often involved in this kind of activity.

Wyoma Clouss of Boise, shows and breeds dogs and is part of the Kennel Association. Mrs. Clouss is in favor of this legislation.

Dr. Jeff Rosenthal, a veterinarian, representing the Idaho Humane Society, stated this is a very deviant activity and bets are made months in advance for these dog fights.

Chairman Darrington asked if there are organized dog fights that go on in Idaho that may be unknown to the authorities? **Dr. Rosenthal** responded there are organized dog fights and cock fights.

Senator Richardson asked if dog fights end with the death of one dog? **Dr. Rosenthal** stated there are specific rules “cage in rules” that determine how a dog fight occurs. The dogs fight until they will not fight anymore. Some are given drugs and trained to fight until the death of the other dog, or they are tortured and killed by the owner.

Larry Sandusky of Meridian, is an active member of the Idaho Brittany Club. He stated he is a hunter and also trains hunting dogs, specifically pointer breeds. Mr. Sandusky stated his support for S1260.

Heather Reilly, Deputy Prosecuting Attorney, stated that as a general felony, the penalty would be a maximum of five years in prison and up to a \$50,000 fine.

Senator Burkett asked what the penalties were at a federal level? **Ms. Reilly** stated she did not know what the penalties or guidelines were at the federal level.

MOTION: **Senator Jorgenson** made a motion to send S1260 to the floor with a do pass recommendation. **Senator Burkett** seconded the motion. The motion was carried by **voice vote**.

S 1274 **Relating to Search and Rescue/Responsibility.** **Mr. Kane** explained S1274 moves the search and rescue function to the section of code dealing with sheriffs’ duties. It also clarifies the procedure of aerial searches.

Chairman Darrington stated the purpose of this legislation is to clarify the authority of the sheriff in coordinating search efforts.

Senator Hill asked if the intent of this legislation was to end the “turf wars”? **Mr. Kane** responded it does not have to do with “turf wars.”

Senator Burkett asked for clarification in referring “aerial search” to Homeland Security and the Idaho Transportation Department. **Mr. Kane** explained most searches do not have aerial searches and usually these departments are used when there is a downed airplane/airman.

MOTION: **Senator Lodge** made a motion to send S1274 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion was carried by **voice vote**.

S 1273 **Relating to Cruelty to Animals.** **Senator Kelly** explained S1273 amends Idaho’s animal cruelty statute to clarify that the statute’s provisions apply to persons who are not the animal’s owner.

Senator Hill wanted to know if “animal” was defined in the legislation. **Senator Kelly** deferred to Ms. Reilly, who defined the term as a vertebrate animal.

Senator Richardson asked what was regarded as cruelty. **Senator Kelly** responded it is the intentional infliction of pain, physical suffering, death, etc., on an animal.

MOTION: **Senator Davis** made a motion to send S1273 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion

carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 30, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett, excused

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:33 p.m.

MINUTES: **Senator Hill** made a motion to approve the minutes of January 21, 2008 as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Senator Richardson made a motion to approve the minutes of January 23, 2008 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS17698C1 **Relating to Assault and Battery.** **Joel Tueber**, Idaho Fraternal Order of Police, explained RS17698C1 will protect off-duty or retired judges, jailers, and correctional staff from assault or battery when the attack is made as revenge because of the victim's official or former official status. It also clarifies that it is a felony to batter a police officer or deputy sheriff out of revenge when the individual is off-duty or retired, or when they are engaged in the performance of their duties.

Senator Hill asked if these were the only circumstances where assault would be considered a felony? **Mr. Tueber** stated, "yes."

MOTION: **Senator Jorgenson** moved to print RS17698C1. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1287 **Relating to Juveniles; Sentencing.** **Larry Callicutt**, Director of Department of Juvenile Corrections, explained S1287 would clarify the current language that the opinions of the Custody Review Board are determinations, not recommendations. Mr. Callicutt also explained the three reasons a juvenile would be allowed to remain in juvenile corrections beyond the age of 19. First, to finish a program; second, to allow a release placement to be put into place; and third, the juvenile still presents some risk to the community.

Senator Hill asked if this legislation was to clarify and solidify the current situation of the Custody Review Board. **Mr. Callicutt** stated it was.

MOTION:

Senator Lodge made a motion to send S1287 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S1319

Relating to Law Enforcement. **Mr Callicutt** explained S1319 would make it clear that sexual contact between any person, including juveniles, on felony parole or felony probation and any employee of the Idaho Department Of Corrections who supervises such persons is a felony.

Brent Reinke, Director of the Department of Corrections, stated this legislation provides clarification to the current law, making sexual conduct between staff and offenders illegal.

Senator Davis asked if a juvenile offender that remains in custody past the age of 18 is still considered a juvenile offender or are they a prisoner? **Jessica Barrett**, Attorney for the Idaho Department of Juvenile Corrections, stated if the offender committed the crime before the age of 18 they are defined as a juvenile offender. **Senator Davis** asked if an individual has been allowed by the Custody Review Board to stay beyond the age of 18 and commits another crime during this time, would there be a subsequent prosecution? **Ms. Barrett** stated that was correct.

Senator Richardson asked if sexual contact included kissing? **Mr. Callicutt** stated kissing was not allowed.

MOTION:

Senator Hill made a motion to send S1319 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1320

Relating to Medical Costs of State Prisoners housed in Correctional Facilities. **Mr. Reinke** explained S1320 defines that the Board of Corrections shall pay for medical services for prisoners, including juvenile offenders, committed to the custody of the Department of Correction.

Senator Davis stated that the legislation was not modifying section 18-101A as Mr. Reinke stated, but rather 20-237B. Senator Davis asked how the two sections were connected? **Paul Panther**, Attorney with the Idaho Department of Corrections, stated section 18-101A defines that a correctional facility is one that also holds juveniles. Mr. Panther further explained that 20-237B states the Department of Corrections is responsible for medical treatment of individuals in a correctional facility. Therefore it was important to note the change in section 18-101A as it relates to 20-237B. **Senator Davis** asked why it did not also state committed to the custody of the Department of Corrections or make a reference to the Department of Juvenile Corrections? **Mr. Panther** responded that the way it was written was to prevent the department from

having to pay for someone else's prisoners. **Senator Davis** stated that by adding "committed to the custody of the department of correction" would preclude the department of juvenile corrections, therefore why isn't the language "and juveniles" after prisoners, and the verbiage "committed to the custody of the department" removed? **Mr. Panther** stated the intent of the verbiage was to make sure that the Department of Correction did not pay for juvenile offenders.

MOTION: **Senator Davis** made a motion to send S1320 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1317 **Relating to Parole.** **Olivia Craven**, Executive Director for the Commission of Pardons and Parole, explained S1317 would allow the Commission of Pardons and Parole to release offenders onto parole on the last business day prior to their parole eligibility date, when that date falls on a Saturday, Sunday or legal holiday.

Senator Davis asked why the legislation did not state, "the next closest business day?" **Ms. Craven** responded that the current procedure is to release the prisoner on the next business day following a weekend or holiday. This legislation allows parole to occur prior to the actual release date possibly saving money and time for the department.

MOTION: **Senator Richardson** made a motion to send S1317 to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

S 1318 **Relating to Honorariums and Expenses.** **Mr. Reinke** explained S1318 would increase the Board of Corrections current compensation from \$50 per day to \$150 per day.

Senator Hill asked why they did not go from \$50 per day to \$100? **Mr. Reinke** stated there are board members that take days off from work and do not feel as though they are being compensated fairly for the amount of time they spend working on the board. **Mr. Reinke** also stated that when Lt. Governor Risch was acting Governor, he requested the board members become more involved, and now it is causing hardship among the members.

Senator Lodge asked how many days a month are spent working on corrections issues? **Mr. Reinke** stated it depends on the month, but typically one to two days a week with a monthly board meeting and sometimes two.

MOTION: **Senator Richardson** made a motion to send S1318 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion.

Senator Davis stated he was concerned, and felt going from \$50 per day to \$100 per day would be more feasible. Senator Davis then asked if another board or commission was paid more? **Chairman Darrington** stated Parole and Probations receives \$200 per day, but noted they were a working committee.

Senator Hill stated that these commissions can be demanding, however, this is a public service and the boards should be paid in a relative amount close to one another.

Senator Richardson stated in defense of his motion maybe they should get a break down of what each board receives in reimbursement.

Senator Davis asked Senator Hill if members of the tax commission receive more or less than \$150 per day as an honorarium? **Senator Hill** stated he would find out if they were limited at \$100 per day.

SUBSTITUTE MOTION:

Senator Davis made a substitute motion to send S1318 to the 14th amending order to compile additional information to compare the honorariums set for the various boards. **Senator Jorgenson** seconded the motion.

The results for the Substitute Motion are as follows: Senators voting Aye were Darrington, Davis, Jorgenson, Hill, McKague, and Kelly. Senators voting Nay were Lodge and Richardson. The Substitute Motion passed.

REPORT

Olivia Craven presented her report on Pardons and Parole to the committee. Ms. Craven reviewed the statistics on offenders, noting that 53% were on probation before going to prison and 51% violated probation because of meth. Idaho has the highest parole rate in the nation and one of the lowest return rates.

Senator Richardson asked the percentage on how many offenders had broken parole? **Ms. Craven** responded 68% of offenders had some problems while they were on parole, and only 35% came back as parole violators. **Senator Richardson** asked what violation the offenders had committed to send them back to prison? **Ms. Craven** responded it could be not showing up for a scheduled appointment, possession of alcohol, or not going to treatment, etc.

Chairman Darrington showed concern for the high parole rate and asked Ms. Craven if she was alarmed by the high number? **Ms. Craven** responded it is very high, but they have a good success rate because they prepare the offenders for parole. They also have a good parole officer ratio to offenders.

ADJOURNMENT There being no further business Chairman Darrington adjourned the meeting at 2:33 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 1, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Senators Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson and Senator Davis.

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2008 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

RS17763 **Relating to the Guardianship Pilot Project Fund.** Heather Reilly explained RS17763 will extend the current sunset of the Guardianship Pilot Project Fund to July 1, 2012.

MOTION: **Senator Hill** made a motion to send RS17763 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS17622 **Relating to Crimes and Punishment.** **Bill Von Tagen**, Deputy Attorney General, explained RS17622 will prevent and prohibit adults from exposing children to sexual conduct with the intent or effect of desensitizing or grooming children for sexually exploitive activity.

Senator Hill asked if this only covered a live sexual act or if it included pornographic images. **Mr. Von Tagen** stated that this legislation only covers a live sexual act, but pornographic material is covered in another statute.

MOTION: **Senator McKague** made a motion to send RS17622 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS17684 **Relating to Restitution.** **Mr. Von Tagen** explained RS17684 will expand the nature and scope of Idaho's restitution statute to include economic loss suffered in an injury accident.

Senator Kelly asked how this statute fits in with insurance claims. **Mr. Von Tagen** responded it may be an individual who is compensated by a civil suit, or wrongful conduct. **Senator Kelly** asked if the victim would be paid by insurance and receive restitution as well? **Mr. Von Tagen** responded they would only receive one or the other.

MOTION: **Senator Hill** made a motion to send RS17684 to print. **Senator Lodge**

seconded the motion. The motion carried by **voice vote**.

RS17735

Relating to Scrap Dealers. Michael J. Kane, Idaho Sheriffs Association, explained RS17735 will clarify that a person who violates *Idaho Code*, Section 54-2702 (2), pertaining to transporting scrap in an amount over one hundred pounds, may be validly prosecuted under *Idaho Code*, Section 54-2703.

Senator Jorgenson asked if scrap dealers are the only conduit for getting rid of scrap. **Mr. Kane** responded there are other places such as recycling centers. **Senator Jorgenson** asked what if an individual melted down wire and would that possession be considered a violation? **Mr. Kane** stated as long as it was not stolen, possession would not be considered a violation. If an individual purchases and transports over one hundred pounds he must have a receipt.

MOTION:

Senator Jorgenson made a motion to send RS17735 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S1349

Relating to Misuse of Public Funds. Senator Kelly explained S1349 clarifies *Idaho Code*, Section 18-5701, by including within its scope all state and local officers and employees who have access to public funds. It sets out misdemeanor and felony penalties, and adjusts the statute of limitations for claims for violations of misuse of public funds.

Chairman Darrington stated this is a very serious problem that happens quite consistently.

Senator Jorgenson asked if public assets could be construed as misuse? **Senator Kelly** responded this legislation includes public monies such as cash, however, there is a different statute that deals with public assets. **Mr. Kane** then stated there is a difference between public assets and public monies.

Senator Hill asked if public officials are held to a higher standard in the case of assets. **Mr. Kane** stated he didn't believe there was a difference of standards.

MOTION:

Senator Jorgenson made a motion to send S1349 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S1339

Relating to Misuse of Public Funds. Mr. Kane explained S1339 will authorize a sentencing court to order a person found guilty of misuse of public funds to make restitution to a public entity or its insurer, and in its discretion order the person to use his or her retirement funds, unless other funds are available to make restitution.

Senator Jorgenson stated he had trepidation about opening a new avenue, and asked if there was any other law that authorized taking retirement funds in order to make restitution? **Mr. Kane** stated he was not aware of any other law that cashes in on a retirement fund. **Senator Jorgenson** asked if the IRS could tap into a retirement fund? **Mr. Kane** responded he was unsure, but suspected the IRS would be able to access most types of funds.

Senator Hill asked why accessing untouchable retirement funds has not been pursued in order to collect restitution? **Mr. Kane** stated his client did not get involved in those types of transactions.

Senator Jorgenson asked if the “discretion of the court” had a certain precedent to follow in collecting restitution? **Mr. Kane** stated the courts need to have this option in the law in order to exercise this process of restitution, however in some cases such as where a spouse is unaware of the crime the court may use that “discretion” to protect a spouse’s retirement savings from being collected for restitution.

Senator Burkett asked if Idaho Counties Risk Management Program (ICRIMP) received premium payments from the counties and cities. **Mr. Kane** responded they did. **Senator Burkett** asked who would receive the money collected by ICRIMP? **Mr. Kane** answered the monies would be distributed throughout the state. **Senator Burkett** asked if some cities/counties were insured by private insurance? **Mr. Kane** responded most of the counties are part of ICRIMP, however Ada County is self-insured.

Senator Kelly asked Mr. Kane to address the issue of spouses and community property. **Mr. Kane** stated the full retirement is community property in this state, however, the court does have the ability in the appropriate situation to order a qualified domestic arrangement.

Senator Burkett questioned if any other state has legislation that enforces retirement restitution? **Mr. Kane** stated he would have to check.

Senator Jorgenson stated his opposition of the bill, and noted it would give the government rights that the public does not have. Also the unintended consequences have not been assessed.

MOTION: **Senator Hill** made a motion to send S1339 to the 14th order of business. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 4, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Kelly** made a motion to approve the minutes of January 25, 2008 as written. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1324 **Relating to Nonprobate Transfers.** **Bob Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained this bill will allow spouses to pass property at the death of the first to die spouse without a probate or summary administration, while keeping the community property status of the property clear.

Chairman Darrington asked if the property could be transferred upon the presentation of the death certificate to the county recorder upon the death of a spouse? **Mr. Aldridge** stated that was correct.

Senator Hill asked if the affidavit for termination of property could only be given by the spouse who gives up the survivor's own rights? **Mr. Aldridge** responded both spouses have the survivorship right, it just depends on who dies first. **Senator Hill** questioned if he could terminate his survivorship, but not his wife's? **Mr. Aldridge** stated that an individual could terminate their own half, but not their spouses.

MOTION: **Senator Hill** made a motion to send S1324 to the 14th order for amendment. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1325 **Relating to Appointment of Conservators.** **Mr. Aldridge** explained S1325 provides for the ability of a person to make a nomination of a conservator within a financial power of attorney, and clarifies various other situations such as multiple financial powers.

Chairman Darrington asked if the protected person is always the person with limited ability to make decisions on their behalf? **Mr. Aldridge** stated sometimes yes, sometimes no. An individual may be able to handle the majority of the decisions, but may be unable to respond appropriately to certain segments of their life.

Senator Kelly asked if an individual could have more than one financial power of attorney. **Mr. Aldridge** stated that could happen.

Senator Burkett asked if it was common for a limited power of attorney to include a nomination of conservatorship? **Mr. Aldridge** stated probably not, that would be an unusual circumstance. **Senator Burkett** questioned whether the court would look at the time of appointment of conservatorship or the quality of the appointments? **Mr. Aldridge** responded often the court will look at the suitability and time factors to a certain extent, and always at the best interest of the individual.

MOTION: **Senator Richardson** made a motion to send S1325 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1326 **Relating to Foreign Guardianships and Conservatorships.** **Mr. Aldridge** explained S1326 provides procedures to transfer foreign guardianship or conservatorship to or from Idaho for developmentally disabled persons.

MOTION: **Senator Burkett** made a motion to send S1326 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1327 **Relating to Protection of Persons under Disability.** **Mr Aldridge** explained in this bill that Idaho law currently provides that a convicted felon should not be appointed guardian of an incapacitated person unless the court finds that such appointment is in the best interest of the incapacitated person. This bill provides court discretion and authority to conduct a criminal background check of the proposed guardian or any person who resides at or frequents the proposed residence of the incapacitated person. If there is a felon that resides or frequents the proposed residence, the Court can then determine whether the appointment of the guardian is appropriate.

Chairman Darrington asked if the greater concern was physical danger or the typical embezzlement. **Mr. Aldridge** stated physical abuse.

MOTION: **Senator Jorgenson** made a motion to send S1327 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1328 **Relating to Formal Testacy Proceedings.** **Mr. Aldridge** explained this bill removes a notice by publication requirement which is redundant and also makes technical corrections.

- MOTION:** **Senator Hill** made a motion to send S1328 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- S 1331** **Relating to Public Assistance.** **Mr. Aldridge** explained that the Department of Health & Welfare is currently in negotiated rulemaking and other negotiations regarding rules for Medicaid. This bill simply allows the rule to be changed, but does not mandate the change.
- Senator Hill** asked what is the practical application of striking out the language? **Mr. Aldridge** responded that when a husband and wife purchase an annuity, the deficit reduction act as they read it, states that a husband and wife can purchase a qualified annuity as long as it meets a list of criteria set out in the deficit reduction act such as naming Health and Welfare as the beneficiary for a state recovery. However, Idaho has a rule that states that such a transfer cannot happen between husband and wife which is being negotiated.
- Senator Kelly** questioned if the statute will not be needed if the negotiated rule goes through, and if the statute is passed? **Mr. Aldridge** stated right now the statute and the rule are parallel, so they would remove the statute so that if they make a change to the rule in the future it would be an effective change.
- MOTION:** **Senator Burkett** made a motion to send S1331 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.
- S 1333** **Relating to Wills.** **Mr. Aldridge** explained S1333 incorporates methods for signing and notarizing documents when the signer was either illiterate or unable physically to sign a Will.
- Senator Burkett** asked if there were any problems with this process from the previous year? **Mr. Aldridge** stated in the past there had been possible unauthorized signatures that the court was unable to confirm as accurate.
- MOTION:** **Senator Lodge** made a motion to send S1333 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- S 1334** **Relating to Real and Personal Property.** **Mr Aldridge** explained currently Idaho does not have a Rule Against Perpetuities, but instead has the Rule against the Suspension of Power of Alienation as to certain property for a longer period than the lives of the persons in being at the creation of the limitation, and 25 years thereafter. He said this bill first clarifies that Idaho does not have a Rule Against Perpetuities. He added that second the bill makes technical amendments to the Rule Against the Suspension of Power of Alienation to clarify when the period starts and to eliminate a potential tax trap when powers of appointment are used.
- MOTION:** **Senator Jorgenson** made a motion to send S1334 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

- S 1335** **Relating to the Uniform Power of Attorney Act.** **Mr. Aldridge** explained S1335 provides a simple way for people to deal with their property by providing a power of attorney, which can be used in case of future incapacity or if the principal is unavailable. He stated that while it was mainly a set of default rules, the act also contained safeguards for the protection of the principal.
- MOTION:** **Senator Hill** made a motion to send S1335 to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- S 1336** **Relating to the Intellectual Property Power of Attorney Act.** **Mr. Aldridge** explained that S1336 makes clear guidelines and powers of the intellectual property power of attorney.
- Chairman Darrington** asked how the principles of law and equity are used? **Mr. Aldridge** stated equity applies to the principle of fairness.
- Senator Kelly** asked if the Uniform Power of Attorney act excludes this kind of power? **Mr. Aldridge** responded the Uniform Power of Attorney Act really does not cover or refer to this kind of power.
- MOTION:** **Senator Kelly** made a motion to send S1336 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- S 1329** **Relating to Exempt Property and Allowances.** **Mr. Aldridge** explained S1329 was written in consultation with Medicaid Estate Recovery as to Medicaid issues and restructures the allowances for surviving spouses and children. He continued to explain that the homestead allowance and existing family allowance in their present form are both deleted and replaced with a family allowance which is only used when the estate is unable to pay its debts and cannot make any distribution to a surviving spouse or minor or dependent disabled children. In that event, the amount of the net assets of the estate, or \$100,000, whichever is less, becomes the family allowance. The bill also limits exempt property to certain types of tangible personal property without any cash allowances and makes technical corrections.
- Chairman Darrington** questioned if in the instance of property transfers to avoid medicaid coming back on the estate, all of this could be avoided if the transfer was done ahead of that particular time for a surviving spouse that goes on medicaid? **Mr. Aldridge** stated it depends on how the transfer occurs.
- Senator Davis** suggested limiting the family allowance, modifying the exempt personal property, and decoupling the homestead allowance from Title 55, that way the problem is a more narrowed down number. **Senator Davis** asked why this was not being proposed? **Mr. Aldridge** stated that idea was reviewed and agreed it would lower the size of the problem, but it still left the main problem in place. **Senator Davis** questioned if this bill became law would medicaid be able to sweep in with

the \$100,000 homestead allowance? **Mr. Aldridge** replied if the person in the Will denies that to their surviving spouse then yes. **Senator Davis** asked about the enforceability of this proposed law. **Mr. Aldridge** stated that was why it took more than decoupling. **Senator Davis** then asked what was the single most significant difference between S1329 and its trailer bill S1330? **Mr. Aldridge** stated the only two elements of the comprehensive bill that are in S1330 are the changes in exempt property and an expansion in the ability to deny the exempt property allowance to a spouse or adult children. **Senator Davis** responded S1330 really is the same as S1329 other than not using the \$100,000 standard, but it specifically gives individuals the right to intentionally not grant exempt property to the surviving spouse.

MOTION: **Senator Davis** made a motion to send S1329 to the 14th order for amendment. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator Kelly questioned sending S1329 to the 14th order? **Senator Davis** responded the intent of that decision is to allow Mr. Aldridge to speak with the medicare individuals involved in order to see if they can pull together a set of amendments, then amend the bill before sending it over to the house.

S 1330 **Relating to Exempt Property and Allowances.** **Mr Aldridge** explained this was a companion bill to S1329, a more comprehensive amendment of the probate allowances. He said this bill contains only the exempt property allowance provisions in case the more comprehensive bill is not enacted.

MOTION: **Senator Burkett** made a motion to hold S1330 at the discretion of the Chair. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 3:02 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 6, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of January 28, 2008 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator McKague made a motion to approve the minutes of January 30, 2008 as written. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

RS17802 **Relating to Guardians of Minors.** **Bob Aldridge** explained RS17802 provides that a convicted felon should not be appointed guardian of a minor, nor reside at the residence or frequent that residence and thereby endanger the minor, unless the court finds similarly that the appointment of the guardian is still in the best interest of the minor.

Senator Kelly asked for a definition on the word "frequented". **Mr. Aldridge** stated that it was defined as to be at a residence more than on an occasional basis.

Senator Hill questioned what the penalty would be for the violation? **Mr. Aldridge** stated this would not be a criminal matter but rather simply for the court to determine whether an appointment should be made.

MOTION: **Senator Hill** made a motion to send RS17802 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1355 **Relating to Exemptions from Attachment or Levy.** **Senator Davis** explained S1355 increases the allowed exemption for a motor vehicle from \$3,000 to \$5,000.

Senator Hill asked how long it had been since the amount had been changed to \$3,000? **Senator Davis** responded 5-6 years.

Senator Burkett asked who was behind this legislation? **Senator Davis** stated lawyers and bankruptcy trustees throughout the state.

Senator Hill made a motion to send S1355 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1356

Relating to County Sheriffs. Michael Kane, Attorney with the Idaho Sheriffs Association, explained S1356 will clarify that a convicted felon may not run for the office of county sheriff. The bill also requires a newly elected sheriff to seek training sponsored by the Peace Officer Standards and Training Academy Council (P.O.S.T.) and the Idaho Sheriff's Association.

Senator Burkett asked if there were any U.S. Constitutional restrictions? **Mr. Kane** responded the U.S. Constitution does not apply to this legislation, but rather the Idaho Constitution can set the parameters on this issue.

Senator Jorgenson asked why wouldn't a sheriff be required to go to P.O.S.T.? **Mr. Kane** stated there was quite a bit of resistance, specifically from smaller counties that held a smaller pool of people, therefore, it was a compromise amongst parties.

MOTION:

Senator Richardson made a motion to send S1356 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1372

Relating to Scrap Dealers. Michael J. Kane, Idaho Sheriffs Association, explained S1372 will clarify that a person who violates *Idaho Code*, Section 54-2702 (2) pertaining to transporting scrap in an amount over one hundred pounds may be prosecuted under *Idaho Code*, Section 54-2703.

MOTION:

Senator Kelly made a motion to send S1372 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1316

Relating to Judgments. Kevin Kempf, Chief of Community Corrections, explained S1316 allows the Idaho Department of Correction (IDOC) to recover a portion of the cost involved in the preparation of Pre-sentence Investigation (PSI) reports. Each defendant would pay a \$150 PSI fee. In doing so, the IDOC expects to potentially generate \$569,000 in FY09.

Senator Richardson asked what was the purpose of a PSI. **Mr. Kempf** stated that the PSI is a vital tool that assists the Judges in their determination of a proper sentence for the offender. **Senator Richardson** asked if the PSI could be used for the defense of the individual? **Senator Davis** stated that it could be used in the defense of an offender.

Chairman Darrington asked if the cost for the PSI reports was in the department's budget, and if it had been submitted to JFAC? **Mr. Kempf** stated the cost of the PSI report was not driving this legislation, but rather to generate money through this process to pay for contracted services to

assist in PSI.

Senator Lodge asked if the cost for a PSI was approximately \$800? **Mr. Kempf** stated it was approximately \$750-\$800 per assessment.

Senator Hill questioned the cost of a supervision fee. How much and how often they are collected? **Mr. Kempf** stated the current fee is \$50 and it included urinary analysis/drug test and an in-house program with drug and alcohol counselors. **Senator Hill** asked if it was \$50 a month and if it applied to inmates or individuals on probation/parole? **Mr. Kempf** stated it was \$50 a month and only applied to individuals on probation/parole. **Senator Hill** questioned if this was simply a revenue generator for the department? **Mr. Kempf** stated that by imposing these fees on the offenders it may help deter future negative behavior.

Senator Burkett asked if the Department of Corrections oversaw all of the restitution payments made by offenders. **Mr. Kempf** stated the department only collected the cost of supervision fees. **Senator Burkett** asked if the fines and fees went to the county but were collected by the departments probation/parole officers? **Mr. Kempf** stated that was correct unless the Judge sentenced the offender to pay a certain amount at the sentencing.

MOTION: For lack of a motion, the Chair will hold the bill in committee.

PRESENTATION **Idaho Department of Corrections Update.** **Tim Higgins**, Gang and Intelligence Coordinator, explained the current gang involvement in the State of Idaho. Mr. Higgins stated that there are about 30,000 violent street, motorcycle, and prison gangs with approximately 800,000 members operating in the U.S. Mr. Higgins explained the main problems we face in Idaho are:

- Gang involvement is attractive
- Recognizing gang indicators after it is too late
- Gang leaders continue to conduct business while in prison
- Gang infiltration of agencies becoming a common place
- No centralized criminal intelligence sharing system statewide, and Idaho is one of the last states that does not utilize this information system.

Mr. Higgins noted the departments commitment to developing and populating their new web site www.idahogangs.com to help public officials and parents recognize the signs of gang involvement.

Senator Lodge asked what tools are needed to fight against gangs? **Mr. Higgins** stated by sharing information with law enforcement. **Senator Richardson** asked what will it take to improve our communications among agencies in order to deter gang activity? **Mr. Higgins** stated that by putting together a fusion unit they would be able to share intelligence.

Senator Kelly asked what kind of things prevent this behavior? **Mr. Higgins** responded by getting involved with schools so that they may be able to identify gang involvement/activity.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the

meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 11, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Richardson** made a motion to approve the minutes of February 1, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS17887 **Relating to Exempt Property and Allowances.** **Bob Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained RS17887 restructures the allowances to meet their original intent by first, deleting the existing family allowance. Second, the current homestead allowance is coupled to *Idaho Code, Section 55-1003* and represents the amount exempt from bankruptcy or seizure by unsecured creditors in a homestead. This bill sets a \$50,000 homestead amount, not dependent on whether the surviving spouse (or minor or disabled children) owned a homestead. Third, the bill allows the decedent to limit or eliminate the ability of a surviving spouse (as to the exempt property, adult children), but not minor or dependent children, to claim the allowance. Finally this legislation greatly simplifies the exempt property allowance by limiting it to only tangible personal property of certain types and eliminating any cash equivalent.

MOTION: **Senator Davis** made a motion to send RS17887 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS17846 **Relating to Immunity for use of Automated External Defibrillator (AED's).** **Senator Keough** explained RS17846 proposes to ensure that any responder, regardless of training, is protected from civil liability. In addition, this bill assures protection of owners.

Senator Jorgenson questioned how does one determine "good faith" in using the defibrillator? **Senator Keough** stated a judge would have the ability to determine "good faith."

- MOTION:** **Senator Jorgenson** made a motion to send RS17846 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.
- RS17851** **Relating to Placing Debris on Highways.** **Senator Keough** explained RS17851 will change the current code governing penalties for throwing trash on highways from a maximum fine of \$300 or 10 days in the county jail to a misdemeanor which can be punishable by a fine of up to \$1000 or jail time up to six months or both.
- Chairman Darrington** asked how do we justify a fine of \$1,000 or possible jail time up to six months for throwing away a candy wrapper or soda can? **Senator Keough** stated this legislation gives the judge discretion on the appropriate fine.
- Senator Davis** stated that a standard needs to be established, possibly by looking at other states statutes on littering.
- MOTION:** **Senator Davis** made a motion to send RS17851 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- RS17837** **Relating to Crimes and Punishments.** **Senator Davis** explained RS17837 extends the current time limitation for filing notice of intent to seek the death penalty in capital cases from thirty to ninety days. The basis for this extension is to allow both the state and the defense additional time to conduct investigations into aggravating and mitigating circumstances.
- MOTION:** **Senator Davis** made a motion to send RS17837 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- S 1369** **Relating to the Guardianship Pilot Project Fund.** **Senator Davis** explained S1369 will extend the current sunset of the Guardianship Pilot Project Fund to July 1, 2012.
- Mr. Aldridge** explained the intent of this legislation is to set up a monitoring system for conservatorships and guardianships in the State of Idaho.
- Senator Hill** asked how long has the project been going? How much money has been expended so far? What is the current balance in the fund? **Mr. Aldridge** stated they have been in business approximately three years. Mr. Aldridge could not remember the exact amount that had been expended so far, however, there is a positive balance in the fund of approximately \$176,000.
- Senator Richardson** questioned what would be the effect of a negative vote? **Senator Davis** stated this legislation was introduced in order to provide a report to the legislature on the fund's progress.
- MOTION:** **Senator Richardson** made a motion to send S1369 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- S 1350** **Relating to the Idaho Uniform Limited Liability Company Act.** **Rex Blackburn**, Uniform Law Commissioner, explained S1350 is for the

purpose of the Idaho Uniform Limited Liability Company Act ("IULLCA") to provide Idaho with modern, updated legislation governing the formation and operation of Limited Liability Companies (LLCs).

Senator McKague asked how this law would effect current LLC's? **Mr. Blackburn** stated it would operate in exactly the same way as the Revised Uniform Partnership Act, and new entities that go into effect after the act would be subject to its provisions automatically. Older entities would have a period of time to modify their operating agreements to retain any provisions they wanted to retain from their earlier agreement before the default provisions of the act became effective, a period of approximately three years. **Senator McKague** questioned who would notify older LLC entities of the change? **Mr. Blackburn** responded the State Bar would notify the legal community that the rules would be changing.

Chairman Darrington inquired if the Secretary of State would send notices to all current LLC's? **Mr. Blackburn** referred to **Chuck Goodenough**, Deputy Secretary of State, Commercial Division, who stated they could do that, however, the mailings may have some fiscal impact on the bottom line.

Chairman Darrington asked if it was deemed that it is inappropriate and there is no value to listing the partners of an LLC upon filing? **Mr. Blackburn** responded the Uniform Liability Company Act does not require disclosure of all members of an LLC, however, it does require disclosure of the identity of one manager or member of the LLC.

MOTION:

Senator Hill made a motion to send S1350 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1370

Relating to Crimes and Punishments. Bill von Tagen, Deputy Attorney General, explained S1370 will prevent and prohibit adults from exposing children to sexual conduct with the intent or effect of desensitizing or grooming children for sexually exploitive activity.

Senator Jorgenson asked what were the penalties that are prescribed by this proposed legislation? **Mr. Von Tagen** stated the penalties described include state prison not to exceed twenty years.

Chairman Darrington noted that this legislation was one step lower than a lewd and lascivious conduct charge.

Senator Hill asked if this legislation applied only to live acts or included pornographic material such as videos? **Mr. Von Tagen** stated there is a separate statute, (Chapter 66 of Title 18), that addresses that sexual crime. **Senator Hill** questioned if the legislation included the proper intent and if Mr. Von Tagen was comfortable with those limits? **Mr. Von Tagen** stated this legislation is intended to address the individuals present at the time of the crime and he felt comfortable with the limits.

MOTION: **Senator Jorgenson** made a motion to send S1370 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1371 **Relating to Restitution.** **Mr. Von Tagen** explained S1371 will expand the nature and scope of Idaho's restitution statute to include economic loss suffered in an injury accident.

Senator Davis asked if an individual had been charged with reckless driving could the court demand restitution? What about inattentive driving? **Mr. Von Tagen** responded the court could demand restitution in those cases if the court deemed it appropriate. **Senator Davis** inquired if this alone satisfied the concern of the Attorney General's Office as far as having something else out there that had a restitution order that could be attributed to, or is this the last of it? **Mr. Von Tagen** stated that in the area of restitution he could not foresee anything else.

Senator Jorgenson asked if this would put more burden on the judge by incorporating the language, "by the discretion of the judge?" **Mr. Von Tagen** stated the reason why the legislation was asking for "discretion" is because of the inability to foresee what circumstances may affect cases of restitution.

Senator Jorgenson questioned if this was simply enabling a victim to make a claim to the Crime Victim's Compensation Fund? **Mr. Von Tagen** stated in this case the victim could apply to the Victim's Compensation Fund, and this bill would allow the Program to collect restitution or reimbursement from the individual convicted of the crime.

MOTION: **Senator Davis** made a motion to send S1371 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:40 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 13, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Burkett** made a motion to approve the minutes of February 4, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Jorgenson made a motion to approve the minutes of February 6, 2008 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS17881C1 **Relating to Volunteer Emergency Responder Disability Benefits.**

RS17918 **Relating to Liens and Foreclosures.**

Chairman Darrington explained RS17881C1 and RS17918 are rewrites from the Commerce and Human Resources Committee and it would be appropriate to carry a motion on both RS's.

MOTION: **Senator Richardson** made a motion to send RS17881C1 and RS17918 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS17852 **Relating to Criminal Procedure and Disposal of Property Illegally Held by a Defendant. Michael Kane, Idaho Sheriffs Association.**

Let the record show **Senator Davis** is now at the meeting and has questioned the motion on RS17881C1. **Senator Davis** stated that the RS was being introduced without the permission of the Commerce and Human Resources Committee. **Chairman Darrington** stated he was misled by the sponsors of the bill, and was told that it was a rewrite on both RS's from that committee. **Senator Davis** then asked the committee to reconsider as it appeared that the concepts behind RS17881C1 was seen the previous day and killed in Commerce and Human Resources

Committee. Senator Davis did not recall that the Commerce Committee consented to have a privileged committee introduce it.

MOTION:

Senator Davis made a motion to not print RS17881C1 and send it back to the sponsors so they may follow the proper protocol. **Senator McKague** seconded the motion. **Chairman Darrington** stated the motion was not out of order and rescinding was an appropriate motion.

Senator Hill asked for a moment of discussion to make sure everyone knew which bill was being discussed, and to give Senator Davis a moment to double check the validity of RS17881C1. **Senator Davis** stated it appeared to be the concepts in a bill that was held in Commerce. **Senator Davis** stated that if the motion passes, the RS could be represented if appropriately requested by the Commerce committee.

Chairman Darrington asked Senator Bastian if this legislation had been heard the previous day, and if permission was granted to come before a privileged committee? **Senator Bastian** stated RS17881C1 was a different bill and had previously been approved for print; however, there were some language changes that needed to be made, which is why he wanted to print this new RS.

Chairman Darrington stated the motion has been made to rescind the previous action of sending RS17881C1 to print. The motion carried by **voice vote**.

Senator Kelly questioned if the motion also rescinded RS17918? **Chairman Darrington** stated, "no."

RS17852

Relating to Criminal Procedure and Disposal of Property Illegally Held by a Defendant. **Michael Kane**, Idaho Sheriffs Association, explained RS17852 will allow police agencies to confiscate and analyze computer devices and digital media used in the commission of a felony.

Senator Burkett thought the police were able to confiscate any item. **Mr. Kane** stated that was a common misconception, but there currently is no law, beyond weapons, that states items can be kept by law enforcement. **Senator Burkett** questioned why they would not use the same procedures as federal enforcement? **Mr. Kane** responded this process deals with cyber crimes. **Senator Burkett** asked why these crimes are not treated the same as drug crimes? **Mr. Kane** responded they need the computers to figure out how the crimes are committed and to update their own technology. **Senator Burkett** inquired when does possession of the computer take place? **Mr. Kane** answered right after conviction.

MOTION:

Senator Burkett made a motion to send RS17852 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1357

Relating to False Pretenses and Misrepresentations. **Heather Reilly**, Deputy Prosecuting Attorney, explained S1357 will clarify the current Identity Theft Law. Specifically this legislation will include individuals that steal any form of identity from another person even though they may use their own personal picture.

Senator Richardson asked if this legislation is complete enough. **Ms.**

Reilly stated this is the current law they have in effect right now, and any individual that obtains credit or services by using another individual's identity will be prosecuted. There are other statutes that pertain to other financial transactions. **Senator Richardson** questioned how this would effect individuals that resided in another state that had stolen identities of citizens in Idaho? **Ms. Reilly** responded it could assist in identifying and prosecuting those individuals.

MOTION: **Senator Burkett** made a motion to send S1357 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1362 **Relating to Assault and Battery.** **Joel Tueber**, Idaho Fraternal Order of Police, explained S1362 will protect off-duty or retired judges, jailers, and correctional staff from assault or battery when the attack is made as revenge because of the victim's official or former official status. It also clarifies that it is a felony to batter a police officer or deputy sheriff out of revenge when the individual is off-duty or retired, or when they are engaged in the performance of their duties.

Heather Reilly and **Michael Kane** both spoke in support of this legislation.

Senator Burkett questioned the act of touching, for example, in a correctional institution? **Mr. Kane** stated that was included in the Unlawful Touching Act, which is defined as an uninvited touch. The reason why this was not included in this legislation was because it would make that act a felony, rather than the current offense of a misdemeanor.

MOTION: **Senator Jorgenson** made a motion to send S1362 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:05 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 18, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

**MEMBERS
ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

**GUBERNATORIAL
APPOINTMENTS**

Thomas J. Hearn was appointed to the **Sexual Offender Classification Board** to serve a term commencing January 1, 2008 and expiring January 1, 2014.

Mr. Hearn explained to the Committee that he has had 31 years of experience working with sexual offenders and their victims. Mr. Hearn has served on three other boards in the past, they are: Children's Task Force; Sexual Offender Committee Certification Task Force; and the Idaho Board of Social Work Examiners.

Chairman Darrington asked if it was a four member board in which three were professionals and one a member of the public at large? **Mr. Hearn** stated there are four members and they consist of: one probation officer, two individuals that work with sexual offenders, and one member represents the victim's advocate committee.

Chairman Darrington asked what kind of information was at their disposal as the decision on the violent sexual predator (VSP) is made? **Mr. Hearn** stated they receive a detailed history which includes previous records, PSI reports, psychological evaluations, victim statements etc. **Chairman Darrington** asked if they were satisfied with the quality of the psychological evaluations? **Mr. Hearn** stated they were; however, the VSP evaluations are not performed by Department of Corrections, but rather an outside source, and the reports have shown improvement.

Senator Richardson asked Mr. Hearn to explain his background. **Mr. Hearn** stated he has had training in clinical social work, primarily in the mental health field, and is certified in Idaho and Washington State.

Senator Kelly inquired if this appointment would cause a conflict of

interest with his business. **Mr. Hearn** stated it does not; however, if a case arises in which he knows the individual he would recuse himself from that particular case.

Senator Burkett asked what kind of individuals he counsels. **Mr. Hearn** stated the majority of the individuals he counsels are offenders and about five percent are victims. **Senator Burkett** followed up asking how that process works and if the victims are getting counseling? **Mr. Hearn** stated there are other counseling practices that they refer victims to, however, when a family is involved he will sometimes counsel especially if there is discussion of reuniting the family.

Senator Burkett questioned if the judges choose particular evaluators and what was the skill level of those individuals? **Mr. Hearn** replied the certification process in Idaho has improved the quality of evaluators. He also noted that there are some cases of favoritism among the judges and attorneys when selecting a counselor for the victim or offender.

Senator Richardson noted there are quite a few states that have been vacillating back and forth on how to handle sexual offenders, and he questioned if the ankle bracelets would help deter any further deviant behavior? **Mr. Hearn** stated the ankle bracelets are a valuable tool and are only used to monitor violent sexual offenders on probation. Supervision of offenders is the main concern, however, it can be very expensive to enforce that kind of supervision.

GUBERNATORIAL APPOINTMENT

Ronald Nate was appointed to the **Judicial Council** to serve a term commencing July 10, 2007 and expiring June 30, 2013.

Mr. Nate gave a brief background on himself to the committee, noting that he was from Rexburg, Idaho and an Economics Professor for Brigham Young University Idaho (BYUI). He has been serving on the Council for the last seven months and has had the opportunity to acquaint himself with the Council and the work load.

Chairman Darrington questioned if he would be able to commit enough time to the Council considering his workload as a professor? **Mr. Nate** responded BYUI supports his decision and stands behind the commitment of its professors to be involved in public service.

Chairman Darrington asked if in the last seven months Mr. Nate had noticed any likes, dislikes, or politics effecting the Council and/or their decisions? **Mr. Nate** stated those issues did not arise in any meetings or discussions.

Senator Hill inquired if the position would fit in with Mr. Nate's family and work life, and if he felt comfortable fulfilling the position? **Mr. Nate** answered he felt very comfortable.

Chairman Darrington stated the Committee will act on these confirmations at the next committee meeting.

Rules Committee with the understanding of the sponsor, Senator Werk, that the legislation would be referred back to Commerce and Human Resources Committee.

MOTION: **Senator Davis** made a motion to refer S 1431 back to the floor of the Senate for re-referral to the Commerce and Human Resources Committee. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

S 1383 **Relating to Guardians of Minors.** **Bob Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained S 1383 provides that a convicted felon should not be appointed guardian of a minor, nor reside at the residence or frequent that residence and thereby endanger the minor, unless the court finds similarly that the appointment of the guardian is still in the best interest of the minor.

MOTION: **Senator Davis** made a motion to send S 1383 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion.

Senator Hill questioned if the guardian does not adequately take care of the minor, are any penalties in place? **Mr. Aldridge** stated the courts could remove guardianship of that individual and impose fines.

Senator Davis clarified there is a certain standard a guardian must uphold when caring for a minor.

The motion carried by **voice vote**.

S 1419 **Relating to Exempt Property and Allowances.** **Mr. Aldridge**, explained S 1419 restructures the allowances to meet their original intent by deleting the existing family allowance. The current homestead allowance is coupled to *Idaho Code, Section 55-1003* and represents the amount exempt from bankruptcy or seizure by unsecured creditors in a homestead. This bill sets a \$50,000 homestead amount, not dependent on whether the surviving spouse (or minor or disabled children) owned a homestead. S 1419 allows the decedent to limit or eliminate the ability of a surviving spouse (as to the exempt property), adult children, but not minor or dependent children, to claim the allowance. This legislation greatly simplifies the exempt property allowance by limiting it to only tangible personal property of certain types and eliminating any cash equivalent.

Senator Davis questioned if Medicaid had any problems with this change? **Mr. Aldridge** stated Medicaid had reviewed this bill and felt comfortable with the language.

MOTION: **Senator Davis** made a motion to send S 1419 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1422 **Relating to Crimes and Punishments.** **Heather Reilly**, with Idaho Prosecuting Attorney's Association, explained S 1422 extends the current time limitation for filing notice of intent to seek the death penalty in capital cases from thirty to ninety days. The basis for this extension is to allow both the state and the defense additional time in order to conduct investigations into aggravating and mitigating circumstances. **Ms. Reilly**

handed out some amendments to the legislation as there were concerns from the court which had to do with the stipulation that allowed the parties to extend the notice requirement beyond the 90 days. The court requested to be notified and involved in the extension of time so that they can determine if the extension is appropriate.

Chairman Darrington asked if the purpose of the amendment was to show good cause between the Prosecutor and the Defense; then the court may issue the extension. **Ms. Reilly** stated yes, and the court must decide if it is appropriate.

Senator Davis questioned why 90 days? Why not 60 days? **Ms. Reilly** stated 90 days was decided in order to make sure there was ample time for a thorough investigation. **Senator Davis** asked what does sixty days provide compared to thirty days, or ninety days compared to sixty days? **Ms. Reilly** stated prior to the preliminary hearing the attention is focused on who committed the murder which can be very time consuming. **Senator Davis** clarified without this amendment the prosecuting attorney may feel pressure to pursue this action without due cause? **Ms. Reilly** stated that was an issue they were trying to avoid. **Senator Davis** then questioned if the politics of having to withdraw the notice of death penalty is far more difficult than not filing? **Ms. Reilly** stated there is significant attention either way.

Senator Burkett asked if there are other states that have a provision or stipulation similar to this? **Ms. Reilly** stated Washington State has a similar stipulation to extend the notice time limit.

Molly Huskey, State Appellate Director, spoke in opposition to S 1422 and said there were disadvantages to this legislation. Her four main points were:

- The cost allocation. The thirty day limitation was previously reviewed and for every 1st degree murder case in which the death penalty is sought two attorneys are required to represent the offender. Changing the statute to 90 days will generate higher costs in order to pay for two attorneys. This may not necessarily cost the state more, but the counties would have to pick up that additional cost.
- The right to a speedy trial would be effected. Having a leeway of 90 days would take up half of the time allowed to ensure the right of a speedy trial. This could affect the defense's case and cost more money.
- The defense would not be given more time to prepare their case, and these stipulations would increase fiscal impact and more investigation.
- In some instances it is difficult to determine how the offender should be charged, this statute could end up being used in all post-conviction problems.

Chairman Darrington questioned if Ms. Huskey's main objection to this legislation is it would allow more time for the prosecution to prepare their

case to file for the death penalty? **Ms. Huskey** responded that was a significant concern, and either the death penalty will be filed or not, and it could raise post-conviction questions. Also the state should not have to spend money on cases where it doesn't need to be spent.

Senator Hill stated if the filing time remained at thirty days with a provision allowing for an extension that both parties agreed on, would that address most of her concerns? **Ms. Huskey** stated it would.

Senator Jorgenson inquired what would be wrong with filing for the death penalty at the beginning of any homicide? **Ms. Huskey** responded that was the preferred method, however not every first degree murder case qualifies as a death penalty case.

Senator Burkett stated it seemed easier to collect the aggregators than it took the mitigators to collect data. What is the responsibility of the defense attorney to provide discovery back to the prosecution in regards to the mitigators. **Ms. Huskey** stated the Discovery Rules gives a time frame and objections.

Senator Kelly asked Ms. Reilly if there were any cases in which the thirty day limit was a problem? **Ms. Reilly** stated only two cases that she was aware of, and in one of the cases, notice was not filed.

Senator Davis asked how they felt about Senator Hill's suggestion of inserting the proposed language as amended, but retaining the thirty days? **Ms. Reilly** answered the Prosecuting Attorney's Association would be pleased to have at least that opportunity, but as Ms. Huskey stated she didn't believe any defendant would stipulate to any extension. **Senator Davis** questioned why wouldn't the defense council actually stipulate to this and use this language as its basis for the ineffective assistance council? **Ms. Reilly** was unable to speak for the defense and deferred to Ms. Huskey. **Ms. Huskey** stated it was possible that some defense attorneys could try to incorporate errors, but she absolutely disagreed with that strategy and believed it to be unethical.

Senator Davis asked Ms. Reilly to address the cost factor that Ms. Huskey referred to for two attorneys, and has the Association of Counties been contacted regarding this legislation? **Ms. Reilly** stated they were aware of it and have not contacted her with any concerns.

Senator Hill questioned if the prosecution can file a notice and later withdraw? **Ms. Reilly** responded "yes". However, prosecutors across the state only want to file notice when the death penalty will actually be sought.

MOTION:

Senator Davis made a motion to send S 1422 to the 14th amendment. **Senator Jorgenson** seconded the motion.

Senator Burkett questioned where this legislation is going and if any amending should be done in committee rather than on the floor?

The motion was carried by the majority of a **voice vote**. **Senators Burkett** and **Kelly** voted **Nay**.

H 352

Relating to the Idaho State Police. Dawn Peck, Manager of the Bureau

of Criminal Investigation, explained H 352 clarifies the authority of the Idaho State Police to retain the full normal federal background check fee when positive identification is made at the state level. The state will do all of the processing without submitting fingerprints to the FBI for processing. The FBI authorizes states to retain the FBI's fee, if a positive identification is made at the state level and the criminal history is obtained via the Interstate Identification Index system.

Chairman Darrington asked if part of the fee is distributed to the Federal Bureau of Investigation (FBI) as it is now? **Ms. Peck** stated currently there is a portion that goes to the FBI, however, what they are saying now is if the Bureau does all of the work they can keep the FBI's share. **Chairman Darrington** questioned if this would be for people that apply for anything that requires a criminal background check? **Ms. Peck** stated that was correct.

Senator Lodge questioned if the term criminal history records still applies or if it is referred to as criminal record review? **Ms. Peck** responded those terms are one in the same.

Senator Jorgenson inquired what percentage the FBI receives? **Ms. Peck** responded since October 1 of this past year, the state fee is ten dollars and the federal fee is twenty-four dollars, unless states submit their information electronically, then the rate is nineteen dollars and twenty-five cents. **Senator Jorgenson** stated that it would not reduce the fee but the state would keep more of the fee if the work was done in the state? **Ms. Peck** stated that was correct.

MOTION:

Senator Jorgenson made a motion to send H 352 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 3:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 20, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly.

MEMBERS ABSENT/ EXCUSED: Senator Burkett

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Richardson** made a motion to approve the minutes of February 11, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Lodge made a motion to approve the minutes of February 13, 2008 as written. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION: Committee Vote on the confirmation of the Gubernatorial Appointment of **Thomas J. Hearn** to the Sexual Offender Classification Board from January 1, 2008 to January 1, 2014.

MOTION: **Senator Davis** made a motion to send the appointment of **Thomas Hearn** to the full Senate with a **do confirm** recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION: Committee Vote on the confirmation of the Gubernatorial Appointment of **Ron Nate** to the Judicial Council from July 10, 2007 to June 30, 2013.

MOTION: **Senator Hill** made a motion to send the appointment of **Ron Nate** to the full Senate with a **do confirm** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT Norman "Bud" T. Langerak was appointed to the **Commission on Pardons and Parole** to serve a term commencing February 5, 2008 and expiring January 1, 2011.

Mr. Langerak first gave a brief description on his background. He has been involved in law enforcement for the last 32 years in Bonner and Bonneville Counties. He has owned The NTL Group since 2005 which is

a financial consulting firm for sheriffs within Idaho.

Chairman Darrington asked Mr. Langerak if he was prepared for the time commitment involved working with this committee? And if he was excited? **Mr. Langerak** stated he was prepared for the time commitment and excited.

Chairman Darrington asked if he was alarmed with the high parole rate? **Mr. Langerak** responded he wasn't as concerned with the high parole rate as with looking into improving the recidivism rate.

Chairman Darrington questioned if he understood the Uniform Sentencing Act. **Mr. Langerak** answered he had very little involvement with that Act.

Chairman Darrington asked as a member of the Parole Commission, how would he square that, with granting paroles with his commitment as a law enforcement officer to public safety. **Mr. Langerak** responded he saw this as an opportunity to further understand the full cycle of the Department of Corrections.

Senator Richardson inquired if Mr. Langerak had seen cases where he watched offenders that he may have arrested and then upon reentering the community monitored their progress. What are the possibilities of individuals successfully reentering into the community? **Mr. Langerak** stated he has seen a paradigm shift within the corrections and law enforcement community. This shift has not yet happened among the community. Employers need to embrace hiring individuals on parole.

Senator Davis asked as a former officer that has participated in the conviction of individuals, how would his service on this commission impact those individuals? **Mr. Langerak** answered he would recuse himself from those hearings if necessary, but would look for what they have done to change their behavior in order to reintegrate into the community.

Senator Davis questioned Mr. Langerak, as the principal owner of NTL Group, if he was employed exclusively by NTL or by Bonneville County Sheriffs Office? What is the current relationship between the NTL Group in the employment capacity with the Bonneville County Sheriffs Office? **Mr. Langerak** stated NTL Group is a contractor, and he is not a standing employee. **Senator Davis** asked if his business could be adversely affected by this appointment? **Mr. Langerak** responded he had spoken at length with Director Craven about possible conflicts. However, his contract with Bonneville County is simply financial.

Senator Lodge asked if Mr. Langerak had any ideas from his previous experience in law enforcement to ensure the inmate parolees make successful choices in the community? **Mr. Langerak** responded the community needs to come together in deciding how to reintegrate parolees, similar to the JoAnn Wood Project, a national non-profit organization engaged in research and advocacy regarding criminal justice policy. The Project promotes policies and practices that facilitate family connections during a period of incarceration and that contribute to the reentry process from prison to the community.

Senator Jorgenson stated since drugs are a serious issue, what is his perspective on handling drug users, sellers, and prisoners? **Mr. Langerak** responded he learned quite a bit from the JoAnn Wood Project. It taught him that a lot of users need treatment, and the time and cost could vary from individual to individual.

Senator Richardson questioned Mr. Langerak's view on the role of a parole officer, and if it was their responsibility to make life miserable for the parolee? **Mr. Langerak** stated he has not had much experience with that role, but in his opinion the parole officers should care, help, and discipline individuals with positive reinforcement.

Chairman Darrington inquired if Mr. Langerak agreed that individuals make a conscientious decision to violate their parole or probation? **Mr. Langerak** stated "yes."

RS17947C1

Relating to Crimes and Punishments. Michael Kane, Idaho Sheriffs Association, explained RS17947C1 will prohibit felons, fugitives, mentally unstable persons, drug users, minors and illegal aliens from possessing energy conducting weapons (often called tasers or stun guns). In addition it makes the use of energy conducting devices a felony and doubles the penalty for assault and battery, hazing and domestic violence.

Senator Davis questioned if a seventeen year old college student would be able to possess an energy conducting weapon? **Mr. Kane** stated they would not as the individual would have to be eighteen years of age in order to possess the device. **Senator Davis** asked if the misdemeanor sentencing provision provides that a fine can be up to \$1,000, or if it meant the fine could be up to \$2,000? **Mr. Kane** stated \$1,000.

Senator Jorgenson asked how do you reconcile this bill with concealed weapons? **Mr. Kane** stated that the laws of concealed weapons only apply to deadly weapons. Lasers and stun guns are not considered deadly weapons.

Senator Kelly inquired where a person might purchase such a device? **Mr. Kane** stated there are taser parties, which are similar to Tupperware parties. Energy conducting weapons are also available on the open market. **Senator Kelly** asked where the criteria for this legislation was taken from? **Mr. Kane** responded this legislation was formed word for word in conjunction with the concealed weapons law with one change. The age limit was changed from twenty-one to eighteen years of age.

Senator Hill questioned if individuals can carry concealed energy conducting weapons? **Mr. Kane** stated some individuals would qualify, however, felons cannot carry concealed or non-concealed weapons at all.

Senator Richardson asked if the intent of the legislation was to keep this device away from civilians? **Mr. Kane** stated the purpose was to keep these weapons away from civilians that are felons and illegal aliens.

MOTION:

Senator Davis made a motion to send RS17947C1 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1430

Relating to Criminal Procedure and Disposal of Property Illegally

Held by a Defendant. **Mr. Kane**, explained S 1430 will allow police agencies to confiscate and analyze computer devices and digital media used in the commission of a felony. Also the computer devices can be used as training tools or by the agency.

Detective Kessinger, Idaho Sheriffs Association, stated this will provide legal sanction in order to perform the duties the courts demand. **Senator Davis** asked Mr. Kane to further explain the use of the word “may” at the end of line 5 and the disjunctive “or” on line 6. **Mr. Kane** stated this language is lifted directly from the law of firearms. This gives the court discretion in the appropriate case to return the computer, camcorder, etc., to the innocent owner after the hearing. **Senator Davis** asked if it also suggested that the court, even after there has been a showing of competent evidence, can still order the disposition as he or she feels is appropriate. **Mr. Kane** stated that was correct.

Senator Kelly questioned if this covered cell phones? **Mr. Kane** stated that was correct. **Senator Kelly** stated there will be a lot of confiscated cell phones. **Mr. Kane** responded the prosecutor will not go through the trouble of a full blown hearing like this on every cell phone that is out there, but rather only in the cases where it could be used as a training device or to further investigate criminal activity. **Senator Kelly** questioned if the appeal provision would apply to an innocent co-owner or spouse? How often and what is the appeal process when notice is published on firearms? **Mr. Kane** stated there is a period of time, notice goes out and the individual has a right to appear, or not. At the end of the trial the court can deem forfeit in the appropriate case or award possession to the innocent individual. **Senator Kelly** inquired if that happens one gun at a time? **Mr. Kane** stated that occurs one person at a time. **Senator Kelly** asked how often does an individual show up for the hearing? **Mr. Kane** stated individuals do show up for those hearings.

MOTION:

Senator Jorgenson made a motion to send S 1430 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 409

Relating to the Idaho Shorthand Reporters Act. **Tana Cory**, Bureau of Occupational Licenses explained H 409, will move the Certified Shorthand Reporters under the umbrella of the Bureau of Occupational Licenses.

Senator Davis asked if it was only section 17 that moves the Certified Shorthand Reporters under the umbrella of Occupational Licenses? **Ms. Cory** responded on page five, line 23, it refers to the bureau’s statute. **Chairman Darrington** stated that on page five it refers to it by code and reference.

Roger Hales, Attorney representing the Bureau of Occupational Licenses, explained that this act references and transfers all the money they collect into the Bureau’s account.

MOTION:

Senator Kelly made a motion to send H 409 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 381

Relating to Probation and Parole Supervision. **Representative Clark** explained H 381 will increase public safety by providing for the electronic monitoring of violent sexual predators (VSP) who are placed on probation or parole.

Senator Hill questioned if the judge or parole board already have that option available? **Representative Clark** stated this will put it in code rather than only policy. **Senator Hill** clarified that this makes it mandatory.

Senator Jorgenson asked if a VSP has help from another individual in removing the device, would they also be found guilty? **Mr. Kempf** stated they would.

Senator Kelly asked if there was a device that went on the offender in passive monitoring? **Mr. Kempf** replied that there are a couple of different methods of monitoring as it relates to global positioning system (GPS). He stated there is passive and active monitoring. He explained that passive monitoring is when a monitor unit is strapped onto the offender, and the offender writes down a detailed schedule of events and where he would be that day. When the offender returns home he places that equipment into a docking station that instantly downloads into the computer system. This allows the parole officers to see exactly where the offender had been that day. **Senator Kelly** questioned if tampering or destroying the docking station was included in the legislation? **Mr. Kempf** stated it was a possibility. **Senator Kelly** asked if there was already something in statute pertaining to this? **Representative Clark** responded he did not believe so.

Senator Richardson stated this is becoming the law in most states, and Idaho would be stepping in the right direction by doing the same thing.

MOTION:

Senator Hill made a motion to send H 381 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:44 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 25, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Hill** made a motion to approve the minutes of February 18, 2008 as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION: Committee Vote on the confirmation of **Norman "Bud" T. Langerak** to the Commission on Pardons and Parole from February 5, 2008 to January 1, 2011.

MOTION: **Senator Richardson** made a motion to send the appointment of **Norman "Bud" T. Langerak** to the full Senate with a **do confirm** recommendation. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS 17941 **Rejecting Certain Rules of the Real Estate Commission.**
RS 17942 **Rejecting Certain Rules of the Division of Building Safety.**
RS 17881C1 **Relating to Volunteer Emergency Responder Disability Benefits.**
The above three RS's were requested to be introduced to print by unanimous consent of the Senate Commerce and Human Resources Committee and then be sent directly to the Senate floor.

RS 17933C1 **Relating to Powers and Duties of Boards of Trustees of School Districts.** The Senate Health & Welfare Committee by unanimous consent request that this RS be introduced to print and returned to the Senate Health & Welfare Committee.

Chairman Darrington noted that the proper documentation had been received in order for the Committee to make a motion on the RS's.

MOTION: **Senator Hill** made a motion to send RS 17941, RS 17942, RS 17881C1, RS17933C1 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

Relating to Immunity for use of Automated External Defibrillator (AED's). **Senator Keough** explained S 1420 proposes to ensure that any responder, regardless of training, is protected from civil liability. In addition, this bill assures protection of owners. **Senator Keough** noted that the AED will not produce a shock if it detects a heartbeat.

Adrean Casper, American Heart Association (AHA), demonstrated how to operate an AED. She stated that there is only an eight to ten percent survival rate for individuals that are only given CPR, however, in Alaska studies have shown there is a forty five percent survival rate if CPR is used in conjunction with the AED device.

Chairman Darrington asked who is responsible to maintain the device, and if there is a log of the service dates? **Ms. Casper** stated the site where the device is located is responsible for the maintenance of the device, and there is a service log built into the unit. **Chairman Darrington** questioned if a business purchased a AED if they could also purchase a service warranty for the device? **Ms. Casper** stated they could purchase a maintenance warranty.

Senator Jorgenson inquired if anyone could buy a AED and place it into a facility where people congregate? **Ms. Casper** responded an individual has to receive a prescription from a doctor in order to purchase one because it is a Class III medical device which requires a prescription under federal law. The AHA believes the devices should be in many locations.

Chairman Darrington questioned how one would get a prescription? **Ms. Casper** answered from a doctor.

Senator Jorgenson asked what is the cost of the AED device and what kind of warranty is available? **Ms. Casper** responded the device can cost between fifteen hundred dollars and three thousand dollars. There is usually a two year warranty on the pads and a five to ten year warranty on the battery.

Senator Burkett asked what is the basis for a doctor issuing a prescription? **Ms. Casper** responded because it is a Class III medical device there is a federal regulation covering the device. **Senator Burkett** asked if anyone that goes to the doctor can get a prescription without any considerations. **Ms. Casper** stated she could not speak for individual physicians, however, the AHA believes these devices can do no harm; so wherever there is a congregation of people is a good place. **Senator Burkett** stated if the device does no harm why would they want to change the language? **Ms. Casper** responded that under current statute to be covered by the Good Samaritan Law an individual would have to be a "trained responder" in order to use the device. This is an artificial barrier that prevents individuals from using the device in an attempt to save someone's life.

Senator Burkett questioned why the device was outlawed in Wisconsin? **Ms. Casper** responded she heard it was because the state was concerned about children using them so only the semi-automatic devices are available for use.

Barbara Jordan, Idaho Trial Lawyers Association, spoke in favor of the legislation with the amendment requiring maintenance on the AED's. By removing the barrier that only a trained individual can use the device, more AED's will be purchased and made available for use. It is also the law in many states that the devices are in schools, airports, and some states give immunity to the lay person that uses the device.

Senator Hill asked if there was a precedent for AEDs to be maintained in order to be protected from liability? **Ms. Jordan** stated she was unsure of the requirement.

MOTION:

Senator Davis made a motion to send S 1420 to the 14th order for amendment. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 353

Relating to Limitation on Certain Tort Damages and Liabilities. Rep. Les Bock explained H 353 will make two modifications. First, it recognizes that nonprofit organizations may be created in the form of a trust. Second, current law requires that the nonprofit organization "regularly bestow benefits to the community at large." This requirement, is very subjective. The proposed amendment would add an objective standard that will allow the requirement to be met if the organization "is tax exempt under section 501(c)(3) of the Internal Revenue Code."

Senator Burkett questioned what organizations are not under section 501(c)(3)? **Rep. Bock** stated there are some organizations out there such as ditch companies and electric co-operatives that are non-profit organizations that could regularly bestow benefits to the community at large, but they would not be entitled to an exemption as 501(c)(3).

Bob Aldridge, representing Trust & Estate Professionals of Idaho, Inc., spoke in favor of this legislation.

MOTION:

Senator Hill made a motion to send H 353 to the floor with a do pass recommendation. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

H 370

Relating to Law Enforcement and Security at the Capitol Building and the Supreme Court Building. Patricia Tobias, Administrative Director of the Courts, explained H 370 will give the Idaho State Police (ISP) responsibility for providing security and protection for Legislators, Supreme Court justices and judges of the Court of Appeals, as well as responsibility for law enforcement at the Supreme Court Building.

Jerry Russell, Director, Idaho State Police, spoke in favor of providing additional security.

David Hahn, Division of Financial Management, stated the Governor wanted H 370 to pass through the process and have a trailer bill for funding after this legislation has been approved.

Chairman Darrington questioned would the trailer bill be an appropriation by statute through the germane committee such as this or would it go through JFAC for appropriations? **Mr. Hahn** stated it would go through JFAC.

Senator Jorgenson asked if they would need one full time personnel (FTP)? **Col. Russell** replied that was correct. He said they had been providing this security for years.

Senator Burkett questioned if they have been doing this for years why would they need an FTP now? **Col. Russell** stated in the past they have used overtime and juggled schedules of the present force. **Senator Burkett** asked if the ISP will take direction from the Chief Justice of the Supreme Court, and does that interfere with the separation of powers? **Col. Russell** responded the way the bill is written the two will be working together in order to determine what is necessary for security. **Senator Burkett** questioned if it would be more appropriate for ISP to make decisions with advice from the Chief Justice? **Col. Russell** stated "yes".

Senator Lodge questioned if a judge and their family was threatened, would the family be protected as well? **Col. Russell** stated as it stands right now if there is any threat made to any official ISP will provide protection and depending on the threat will take the necessary steps to ensure the safety of the individual(s).

MOTION:

Senator Lodge made a motion to send H 370 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 408a

Relating to Misdemeanor Probation Services. **Ms. Tobias** explained H 408a establishes that counties shall provide misdemeanor probation services. It also provides for training and certification of misdemeanor probation officers through the Police Officer Standards and Training Academy (POST). This bill also provides misdemeanor probation officers with authority to make arrests for probation violations occurring in the presence of peace officers and provides increased penalties for assaults and batteries on misdemeanor probation officers.

Dan Chadwick, Executive Director of Idaho Association of Counties, spoke in favor of H 408a.

Senator Richardson questioned the definition of a misdemeanor probation officer? **Mr. Chadwick** stated an adult misdemeanor probation officer's job is to enforce the orders of the court to make sure the offender is compliant. **Senator Richardson** asked if it is similar to a parole officer? **Mr. Chadwick** stated that was correct.

Senator McKague asked if there are misdemeanor officers already in place? **Mr. Chadwick** stated there are, however, they want to "beef" up their services.

Senator Burkett questioned how it would impact county by county? **Mr. Chadwick** stated it will create better training and services along with more officers.

Senator Davis questioned what was the main concern of the House of Representatives in reference to section five? **Mr. Chadwick** stated the House was concerned with law enforcement seeing a probation violation and scooping up a misdemeanor probationer without having to go through

the judge first. **Senator Davis** asked why did the House struggle with section five? **Mr. Chadwick** stated there was concern in giving additional authority to police officers.

MOTION: **Senator Davis** made a motion to send H 408a to the floor with a do pass recommendation. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 27, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator McKague** made a motion to approve the minutes of February 20, 2008 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS 17990 **Relating to Transfer of School Property.** The Senate Education Committee by unanimous consent request that RS 17990 be introduced for print and then referred back to the Education Committee.

RS 17767C1 **Relating to Increasing the Civil Penalty Authority of the State Board of Land Commissioners.** The Senate Commerce and Human Resources Committee by unanimous consent request that RS 17767C1 be introduced for print and then referred back to the Resources and Environment Committee.

MOTION: **Senator Hill** made a motion to send RS 17990 and RS 17767C1 to print. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS17960C1 **Relating to the Administrative Procedure Act.** **Roy Eiguren**, Idaho Council on Industry and Environment, explained RS 17960C1 amends the Idaho Administrative Procedures Act in three ways: first, it provides an expanded definition of "guidance" as developed by state agencies; second, it amends the act to conform to an Idaho Supreme Court definition of a "rule," and third it conforms legislative actions concerning rules review by deleting the ability of the Legislature to amend or modify rules to conform to another Idaho Supreme Court case.

Chairman Darrington questioned if this legislation was germane to the Senate Judiciary and Rules Committee or the Senate State Affairs Committee? **Mr. Eiguren** responded it was appropriate for either committee.

Senator Burkett inquired why this legislation has come out so late in the session. **Mr. Eiguren** answered they have taken the necessary time to address individual concerns with the legislation.

Senator Hill asked why would the Legislature conform to the Idaho Supreme Court's definition of rule? **Mr. Eiguren** responded the Supreme Court in the Asarco case provided additional definition as to what a rule encompasses by way of definition. That case brought about six new additional elements which were important to add to the statute.

MOTION: **Senator Richardson** made a motion to send RS 17960C1 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

HCR 38 **A Concurrent Resolution: Rejecting Certain Rules of the Department of Juvenile Corrections Pertaining to Rules of the Custody Review Board.** **Representative Leon Smith** explained HCR 38 would reject amended portions of two subsections of a pending rule of the Department of Juvenile Corrections pertaining to Rules of the Custody Review Board as not being consistent with legislative intent.

MOTION: **Senator Hill** made a motion to send HCR 38 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1438 **Relating To Crimes and Punishments.** **Michael Kane**, Idaho Sheriffs Association, explained S 1438 will prohibit felons, fugitives, mentally unstable persons, drug users, minors and illegal aliens from possessing energy conducting weapons such as tasers or stun guns. In addition, it makes the use of energy conducting devices a felony and doubles the penalty for assault and battery, hazing, and domestic violence.

Joel Tueber, Idaho Fraternal Order of Police, presented two short videos on energy conducting weapons. The videos demonstrated the effect of a taser gun and how to operate the device.

Senator Richardson questioned how it effects the neurological system? **Mr. Tueber** stated it shuts down the neuromuscular signal to the brain and incapacitates the individual.

Chairman Darrington asked how long does the incapacitation lasts? **Mr. Tueber** stated five seconds on a police taser and thirty seconds on a civilian taser. **Chairman Darrington** questioned the length of the recovery time? **Mr. Tueber** replied some individuals may suffer from nausea or dizziness, others do not suffer from any side effects.

Senator Kelly asked how the device is activated to shoot? **Mr. Tueber** stated that a button is located on top of the taser with a plastic shield that slides back. He also mentioned that a police taser can shoot out thirty-five feet, and the civilian model can shoot out fifteen feet.

Senator Jorgenson questioned why there was not a provision to limit sales? **Mr. Kane** stated they did not feel it was appropriate for a representative of law enforcement to dictate to the general public except for a felon, who or who could not purchase a taser. Taser, Inc. performs voluntary background checks on individuals purchasing a taser.

Senator Hill asked how the probes attach to the victim. **Mr. Kane** stated the two probes come out of the device and enter through the clothing and attaches to the skin.

Senator Burkett questioned if the concealed weapons statute only applied to concealed weapons as opposed to possession? **Mr. Kane** answered that was exactly correct. He also noted that a mentally incapacitated individual would not be able to purchase or possess a gun or an energy conducting device. **Senator Burkett** asked if an individual had a handgun in their trailer they would not be considered in violation of the concealed weapons statute, whereas if he had a taser in his trailer he would be in violation of that statute? **Mr. Kane** stated that was correct.

Michael Masterson, Chief of Police, Boise Police Department, stated the department unanimously agreed on supporting this legislation.

Senator Richardson asked how often is the taser gun used? **Chief Masterson** stated approximately once a week.

Senator Lodge inquired how much it cost to purchase a taser gun? **Chief Masterson** stated the civilian model costs approximately three hundred dollars, and the law enforcement model costs five hundred dollars.

Senator Davis questioned why an energy conducting device did not qualify as an "arm?" **Mr. Kane** stated it has never been interpreted as an "arm" or "firearm," a taser is not the same as a firearm. These weapons are used to incapacitate someone who is a threat.

MOTION:

Senator Jorgenson made a motion to send S 1438 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 446a

Relating to Veterinarians. **Karen Ewing**, Board of Veterinary Medicine, explained H 446a will increase the time to three years in which the personal representative, executor, or sole surviving heir of a deceased veterinarian must sell the veterinary practice.

Chairman Darrington stated if a veterinarian dies, his partner could take advantage of the spouse who has a limited amount of time to sell the business and then the partner can purchase it for less than market value.

Senator Davis was curious if there was legislation that protected doctors, attorneys, etc. **Ms. Ewing** stated this legislation only applied to veterinarians and she was not familiar with the statutes that govern CPAs, doctors, and attorneys.

MOTION: **Senator McKague** made a motion to send H 446a to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 410a **Relating to Dentists. Skip Smyser**, representing Idaho State Dental Association, explained H410a allows a personal representative, executor, heir or spouse of a deceased dentist six months to continue operating the dental practice to preserve the business asset or attempt to sell the practice.

Dr. John Blazedell, a Caldwell dentist, spoke in favor of the legislation.

Chairman Darrington asked if it was common business practice for dentists to operate as a Limited Liability Company (LLC)? **Dr. Blazedell** stated it is common to see LLCs. **Chairman Darrington** questioned why it was the will of the House Committee members to limit this legislation to sole proprietors? **Dr. Blazedell** stated he was unsure. **Mr. Smyser** stated it was because they felt there were already safe guards in place for incorporated entities.

Senator Davis stated why not have it apply to a single practicing dental physician? **Mr. Smyser** stated it was not their intent to limit the business options of a dentist.

Senator Hill also shared the same concerns and suggested inserting the term "sole owner" into the language of the bill.

MOTION: **Senator Davis** made a motion to send H 410a to the 14th order for amendment. **Senator Jorgenson** seconded the motion. The motion carried by voice vote.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:44 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 3, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Richardson** made a motion to approve the minutes of February 25, 2008 as written. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 17957C1 **Relating to Courts and Miscellaneous Provisions; Civil Legal Services Fund.** **Teresa Molitor**, representing Idaho Legal Aid Services, explained RS 17957C1 creates a fund to receive monies to be used by Idaho Legal Aid Services, Inc. to provide free civil legal assistance to low-income individuals in Idaho.

Chairman Darrington stated it was his understanding that this was not an appropriations bill, but simply establishes a fund where money can be placed from various sources including appropriations, so that the money can be used for legal aid service. **Ms. Molitor** stated that is correct.

Senator Hill questioned if legal aid services are already in existence, wouldn't they already be able to receive contributions? If so why is the fund needed? **Ms. Molitor** stated they are currently in existence, however, the current difficulty for Legal Aid is they are only able to help one in five people that call their offices requesting services. She further stated that they would like to create the fund in case there could be some other sources of revenue even from the state.

Senator Jorgenson asked if the existence and the use of legal aid actually generates revenue? **Ms. Molitor** stated that was correct.

Chairman Darrington stated this legislation if printed will not be back during this session, but will come back at the beginning of next session.

MOTION: **Senator Jorgenson** made a motion to send RS 17957C1 to print.

Senator Richardson seconded the motion. The motion carried by **voice vote**.

H 456

Relating to Fugitives from Justice; Extradition. Bill von Tagen, Deputy Attorney General, explained H 456 updates the *Idaho Code* to conform with the Uniform State Law that was passed in 1936. This will create uniformity in the extradition law of this state and other states, improving the efficiency of the extradition process authorized under Article IV, Section 2, Clause 2 of the Constitution of the United States.

Senator Richardson questioned if a prisoner or felon escapes to Mexico would this legislation affect the extradition of that offender. **Mr. Von Tagen** stated H 456 deals with the agreements made between states within the United States. Extradition from Mexico is handled by a treaty between the two countries.

MOTION:

Senator Jorgenson made a motion to send H 456 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 417a

Relating to Adult Criminal Sex Offenders; Group Dwelling. Representative Lynn Luker explained H 417a is part of a solution to transitional homes popping up in residential neighborhoods--this specifically addresses transition homes that house sex offenders. He stated that the purpose of the bill is to balance the need for adult sex offenders to have housing available to them with the concern of citizens that these homes are being established in residential neighborhoods. He explained that sex offenders are being placed in these transitional homes in residential neighborhoods primarily because of interpretations of the federal Fair Housing Act. The Fair Housing Act was amended in 1988 to include those who are addicted to drugs and alcohol as falling into the classification of handicapped. The basic use of these homes is usually for recovery from drug and alcohol addiction, but other classifications have been added including sex offenders and others being paroled out of prison. **Representative Luker** continued to explain that this legislation sets a limitation of two registered adult sex offenders in a residential dwelling unit; provides for a judicial bypass in limited circumstances to exceed that limit; gives cities and counties authority to exceed the limit by ordinance to allow and regulate group residence homes for sex offenders; and provides a misdemeanor penalty for violation, consistent with other statutes restricting sex offenders. There is a grandfather clause for current residence situations and for those that are operating group homes already allowing them to continue with a capacity of up to eight (8) or the current number in the home, whichever is less.

Chairman Darrington questioned if a transitional home limited to two sex offenders would be limited to the five hundred foot range from schools.

Representative Luker stated that would not change. **Chairman Darrington** then asked where he would prefer that transitional homes be established? **Representative Luker** said there was no preference but cities and counties would be able to evaluate the situation. One home operates successfully in Boise in a light industrial area.

Senator Richardson questioned why the bill was being presented at this

time, is there a particular need for it? **Representative Luker** stated it has been an increasing phenomenon in the Boise area and it may affect other areas around the state. **Senator Richardson** asked where “New Hope,” a transitional facility in Boise, stood on this legislation? **Representative Luker** stated they are not taking a position on H 417a.

Senator Davis inquired if we wanted sexual offenders located in a few locations or spread out over a community? **Representative Luker** stated this legislation is not specifically designed to keep them out of residential areas, or zone what areas the transitional homes should be in, but rather it addressed the concentrations of sexual offenders. **Senator Davis** questioned what if there are registered sexual offenders that are related and want to visit their parents and/or reside in their home, how would this legislation apply to that scenario? **Representative Luker** stated the first exception would be to allow up to two offenders and transitory visits would not apply; it applies to a fixed living domicile. **Senator Davis** asked if there are more than two sexual offenders in the family, would they be precluded from living together? **Representative Luker** stated that was the reason for the bypass, if there is a situation where that might occur.

Senator Kelly questioned how this bill relates to H 465? **Representative Luker** stated that H 465 is not a mandatory bill, but opens the door for the city to have forums. **Senator Kelly** asked how would H 465 give the local governments the authority to regulate? **Representative Luker** responded the Federal Fair Housing Act would require them to go through reasonable accommodation review and H 465 would make that stipulation inapplicable.

Senator Burkett asked how would limiting two or three individuals to a house make a difference in the protection of the public? **Representative Luker** responded this allows a husband and wife, or any other economic unit to be allowed to be together. **Senator Burkett** questioned what is the public purpose and the standard that is being set? **Representative Luker** stated they have already made a public policy decision to register sex offenders.

Senator Davis questioned if the standing was limited to cities and counties? **Representative Luker** stated the design of this presently is (1) to put a higher standard on sex offenders, and (2) to give cities and counties the ability to get an injunction against this violation. He stated that they did not go the next step to have the individual public appear as a plaintiff until they first saw how it operated. **Senator Davis** asked if you cannot get a city or county involved, what about the individual landowner who is troubled by the problem? **Representative Luker** answered it would have to be sorted out with a complaint from the prosecutor. **Senator Davis** stated they would not get the injunctive relief that a person would want.

Chairman Darrington asked what is the percent of sexual offenders who re-offend compared to other parolees? **Representative Luker** stated there was a lower recidivism rate for sexual offenses. **Chairman Darrington** questioned if the shutting down of transitional homes, as this legislation will most likely do, would increase the number of people in

prison? **Representative Luker** responded it will not increase the prison population because many of the transitional homes will be grandfathered into the program.

Brent Reinke, Director of the Department of Corrections (IDOC), stated they were taking a neutral position on this legislation. **Director Reinke** stated that the goal today is to provide the committee with some facts shown on the handout (attached) that Dr. Perrien will explain more thoroughly.

Dr. Mary Perrien, Psychologist, Idaho Department of Corrections, provided information on sexual offenders in the state of Idaho. She said there are one thousand three hundred thirty eight sexual offenders in an Idaho prison which is twenty one percent of Idaho's prison population. There are two thousand nine hundred thirty eight adults who reside in an Idaho community that are on the sex offender registry. She said the main goal is to reduce recidivism, not only prevent another sexual occurrence, but also find what will delay it. She stated that research has clearly shown that stable housing, treatment, and supervision have a very positive effect on reducing recidivism.

Senator Hill asked what crimes the sexual offenders commit to return to prison and if they had research regarding victims. Also what additional threats are posed towards a neighbor of a sexual violator? **Dr. Perrien** stated the sexual offenders usually return to prison for non-sexual offenses. Often offenders do travel when trying to establish relationships for the purpose of offending so the threat is not necessarily where it might be perceived.

Olivia Craven, Director of Pardons and Parole, stated her department also remained neutral on the legislation. **Ms. Craven** felt it was important to advise the committee how many inmates are going to transitional housing facilities. In January 2008, one hundred eight inmates (only three sex offenders) were released to parole, twenty-four percent of those individuals went to transitional housing. In February 2008, one hundred eleven (only two sex offenders) were released to parole and twenty-nine percent of those individuals went to transitional housing.

Chairman Darrington asked if they will have a lower parole rate for sexual offenders without transitional housing? **Director Craven** stated most likely. **Chairman Darrington** asked if this will result in more offenders back in prison? **Director Craven** stated without transitional housing they will not be releasing as many offenders.

Senator Burkett questioned if the concept of stable housing reduces recidivism, and if transitional housing is the same as stable housing? **Director Craven** stated it can be, especially if the facilities ensure there is treatment available and with parole officers evaluating the homes.

Senator Richardson asked for an explanation of a transitional home. **Director Craven** stated that they do not supervise these homes, and the homes are not under the Department of Correction or the Parole Commission. She added that she did not believe the homes had twenty-four hour supervision.

Senator Kelly questioned if entering into a transitional home was part of a "release agreement?" **Director Craven** stated the Commission is aware of some sort of a housing plan before the inmate is paroled.

Senator Davis said he understands that transitional housing and supervision reduces recidivism and without housing the department is less likely to parole, so without supervision and housing they are going to top out. He questioned why the department is taking a neutral position on the legislation since it would cause fewer parolees and fuller prisons?

Director Reinke stated that understanding the need for more local issues with cities and counties, the department thought it was in the best interest of this committee and policy-setting that is done here that they bring forth this information. He said the assumption made is accurate, or at least potentially could be, however, the department remains neutral.

Jerry Todd, Public Probation Officer, representing Planning and Developing Services for the City of Boise, stated they were in favor of the legislation and the regulatory capabilities. However, they do not wish to dismantle the current programs in place in order for the offenders to be able to rehabilitate back into society.

Chairman Darrington inquired if in his opinion there were any residents of this state that want any sexual offenders living in a close proximity of them? **Mr. Todd** stated probably not.

Senator Hill questioned why the city was not allowed to make some of these same restrictions without having to change the state law? **Mr. Todd** said it goes back to the Supreme Court decision that affects the American Civil Rights Act and the Fair Housing Act. He said not all of the parolees were sex offenders, but were also recovering from drug or alcohol addictions that gives them protection under the American Civil Rights Act as having a disability. He said as a municipality and under the Fair Housing Act, they must treat the transitional housing as any other single family dwelling. Therefore, they cannot limit the number of individuals in a house.

Chairman Darrington asked if he was suggesting there was a correlation between sex offenders and substance abuse? **Mr. Todd** stated he was not making that assumption.

Senator Burkett questioned why the City of Boise can not discriminate against the Fair Housing Act, but the State of Idaho could allow that to happen? **Mr. Todd** stated currently there are not any regulatory tools available to the cities, and this legislation will bring the state statute in line with the language in the Fair Housing and American Civil Rights Act.

John Eaton, Idaho Association of Realtors, spoke in support of the legislation and the regulation it provides. However, the property rights of the established owners needs to be respected. Some of the transitional homes that are located in residential areas are profit making centers and are being used for commercial use. This legislation would regulate the use with some process at the local level for hearings, and neighbors to be notified.

Chairman Darrington questioned if Mr. Eaton agreed with him that there

would not be another transitional home created in the state of Idaho? **Mr. Eaton** stated he would not pretend to know what any city elected official might do with regard to the options that could be taken on these houses.

Travis Tanner, a Boise resident, stated that his family recently bought a house on the Bench to get away from houses that had sex offenders in the North End. He said that about a year ago a transitional house came in four houses down from his house. He said it was run by Bethel Ministries, one of the organizations that serves to bring men out of prison into a faith based environment where they can receive help to get back into society. He said he found out about this by searching the internet and that there were six sex offenders in the house. He said that many sexual offenders so near his home created undue burden and stress on his family.

Chairman Darrington questioned how Mr. Tanner would feel having two sexual offenders in a house rather than three? **Mr. Tanner** stated he could deal with two offenders.

Rob Lee, Executive Director of Bethel Ministries, spoke in opposition to the legislation. **Mr. Lee** stated he was not aware of any other ministry available to sexual offenders in Idaho and explained how important their work is in providing rehabilitation and transition for sexual offenders. Bethel, a non-profit organization, works with the Department of Corrections and Probation Parole to make sure that the men in the house have an element of supervision. He said he also works very closely with specialized probation and parole officers out of District 4 as well as the section supervisor in this district to make sure their men are held to a higher standard. He said they work with Sane Solutions as much as they can to make sure the men go to treatment on the same exact night. The men can hold each other accountable while living together and within group. He said he had read case studies that sex offenders that are in a group setting are less likely to offend. He added that sex offenders that are isolated and left to their own devices are more likely to re-offend.

Senator Jorgenson asked if the ministries' workers were certified or had any specialized training? **Mr. Lee** stated the ministry is designed as a support group and the staff is not certified, however, there is one certified counselor that meets weekly with the offenders.

Senator Lodge questioned the length of stay? **Mr. Lee** stated the offenders sign a six month commitment, but are not held to it.

Senator Davis stated that he understood that Representative Luker or Mr. Tanner were not concerned with the good work that they were trying to do, but where they were doing it. They don't want it right in the middle of a residential neighborhood around potential victims. **Senator Davis** said that it was his understanding that they wanted transitional houses to locate in an industrial or commercial area and continue the work there. **Mr. Lee** responded he wished they could have the homes in light industrial areas, however, the homes that work best for supervision with the five hundred foot laws and other regulations confine them to residential areas.

Miranda Tanner, young daughter of Travis Tanner, stated she does not

feel safe in her own home and feels uncomfortable going to the bus stop to go to school since it is right next to the transitional home.

Dave Taylor, resident of Boise, supports the legislation and felt as though it would be easier for eight sexual offenders to conspire to commit a crime rather than two.

Ron Thompson, Boise resident, voiced his support for the regulation this legislation establishes.

Chairman Darrington questioned where Mr. Thompson would like to see the transitional homes located? **Mr. Thompson** stated in light industrial areas, however, he felt as though these organizations are for profit and will be able to establish transitional homes in residential areas even if this legislation passes.

Patti Bell, resident of Boise, is in favor of H 417a, and feels as though the current regulation creates environments that are not safe in established neighborhoods with children and families.

In closing, **Representative Luker** noted that the economics are the same whether or not the organization is a non-profit. He also stated that offenders need treatment and the cap of two sexual offenders living in a transitional home protects all areas.

MOTION:

Senator Lodge made a motion to send H 417a to the floor with a do pass recommendation. **Senator Hill** seconded the motion.

Senator Lodge explained her support of the legislation.

Senator Davis stated he understood the concerns of those in favor and those opposing the legislation.

The motion passed by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 3:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 5, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Lodge** made a motion to approve the minutes of February 27, 2008 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS 18016C1 **Relating to Maternal Death Review Panel.** The Senate Health and Welfare Committee by unanimous consent request that RS 18016C1 be introduced for print and then referred back to the Committee.

RS 17969 **A concurrent Resolution Supporting Specified International Education.** The Senate Education Committee by unanimous consent request that RS 17969 be introduced for print and then referred to the Senate floor.

MOTION: **Senator Hill** made a motion to send RS 18016C1 and RS 17969 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

H 517a **Relating to Consumer Protection; Elderly or Disabled Persons.** **Representative James Ruchti** explained H 517a provides additional protection to the elderly and the disabled from scams under the Idaho Consumer Protection Act.

Senator Richardson questioned if this legislation was connected with Gavin Gee, Director of the Department of Finance, and what his agency is doing to educate the elderly on these fraudulent scams? **Representative Ruchti** stated the Department of Finance was connected and aware of this legislation. **Senator Richardson** inquired if the list of scams would be a growing list to keep up with the new techniques used to scam the elderly and disabled? **Representative Ruchti** stated the list was static and would not grow because the wording in the subsections is broad

enough to take into consideration the advanced techniques used by scam artists. Possibly in the future they may have to go back and review this protection act.

Senator Davis questioned if this legislation would run into problems due to the outcome of the *Gillihan v. Gump* case, by using the word “defendant,” and questioned using the term “defending party” instead? **Representative Ruchti** stated that had not been taken into consideration. **Senator Davis** asked if they were comfortable sending the legislation to the 14th Order for amendment? **Representative Ruchti** stated that would be acceptable.

Maribeth Connell, volunteer with the AARP, spoke in favor of the legislation.

Senator Kelly inquired why the disabled was included in the legislation? **Representative Ruchti** stated the legislation was modeled after a Wisconsin statute, and they felt the same consideration also seemed applicable to the disabled.

Senator Burkett questioned if an individual would have to prove their disability in order to be covered by this legislation. **Representative Ruchti** responded “yes.”

MOTION:

Senator Burkett made a motion to send H 517a to the 14th Order for amendment. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 382a

Relating to Adult Criminal Sex Offenders and Access to Children in School. **Representative Jim Clark** explained H 382a will amend *Idaho Code Section 18-8329* to clarify the premises in which sex offender access is prohibited. The amendment to the legislation required posted signs in front of schools advising sexual offenders of the 500 foot restriction. It also included paper notification to all parties effected. The loitering issue which is in effect thirty minutes before and after school was also addressed.

Senator Burkett asked if the legislation was still based on loitering. **Representative Clark** stated it was still based on loitering. **Senator Burkett** questioned if a sex offender was briskly walking on the sidewalk in front of the school during the established “loitering” times would he be in violation? **Representative Clark** stated the individual would not.

Reverend Bill Roscoe, Executive Director, Boise Rescue Mission, explained this charity provides emergency shelter, food, clothing, counseling and Christian teaching to the homeless and others in need. Currently *Idaho Code, Section 18-8329* prohibits sex offenders from residing within 500 feet of schools, which is good. However, this Idaho Code creates a problem for the Boise Rescue Mission because schools can, and have, moved to within 500 feet of their facility. Schools can locate anywhere and move from place to place and the Mission cannot.

Due to this burden of restriction placed on the Mission they proposed the following amendment:

“(h) Stays at a homeless shelter or resides at a recovery facility if such shelter or facility has been approved for sex offenders by the county sheriff or municipal police chief.”

Chairman Darrington asked if they took in individuals on parole and probation, and if so how many? **Reverend Roscoe** stated they took in a half dozen or more. City Light Home for women and children consisted of approximately ninety percent last year that were on probation or parole.

Senator Lodge questioned if the River Street facility was in a single family neighborhood? **Reverend Roscoe** stated it was not. **Senator Lodge** inquired if Anser Charter School was looking for a new location? **Reverend Roscoe** answered that was correct. His primary concern is that a school could locate themselves near his pre-established facility and create a ripple effect where the ministry would no longer be able to accept certain offenders which would lead to more unsupervised homeless offenders on the street.

Senator Kelly asked if the exception the Mission was seeking would be based on a person by person basis? **Reverend Roscoe** responded the local chief of police or county sheriff would make that determination. Typically, the individual being held in custody that is going to be paroled or placed on probation would make an application to their program. The Mission would then forward that application to the Chief or Sheriff and seek their approval to house that individual at their facility.

Senator Jorgenson inquired if the Rescue Mission charged any fees for services provided? **Reverend Roscoe** stated there are no fees imposed on homeless individuals, however, individuals participating in transitional housing are required to pay two hundred fifty dollars a month, which includes room and board and drug testing.

Chairman Darrington clarified that the Boise Rescue Mission was a non-profit organization.

Jim Gambrell, Director of Boise Rescue Mission, spoke in favor of this legislation with the proposed amendment. Mr. Gambrell stated the homeless population will not go away and with the added accelerator of methamphetamine, individuals need a place of refuge.

Representative Clark stated they would be willing to include the proposed amendment into the legislation.

MOTION:

Senator Davis made a motion to send H 382a to the 14th Order for amendment. **Senator Lodge** seconded the motion. The motion carried by voice vote.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the

meeting at 2:20 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 10, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

**MEMBERS
ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator McKague** made a motion to approve the minutes of March 5, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 17779 **Relating to State Government and Permanent Building Fund Advisory Council.** **Chairman Darrington**, explained RS 17779 allows Boise State University, Idaho State University, and Lewis and Clark State College to opt out of supervision of building construction by the Division of Public Works if all the funding for the project was from nonstate revenues. All liability would rest with the college or university for any issues related to any project not subject to the division of public works supervision.

MOTION: **Senator Richardson** made a motion to send RS 17779 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 442 **Relating to Vulnerable Adults.** **Representative Russ Matthews** explained H 442 clarifies that unjust or improper use of a vulnerable adult's financial power of attorney falls within the definition of exploitation because it is a misuse of a vulnerable adult's funds, property, or resources.

Senator Kelly questioned if the terms "improper" or "unjust" was defined. **Representative Matthews** stated they were defined.

Bob Aldridge, Trust and Estate Professionals of Idaho, spoke in favor of this legislation. Mr. Aldridge spoke from first hand experience in witnessing individuals with the power of attorney taking advantage of the funds designed to pay for the keep and care of the vulnerable adult. When individuals take advantage of these funds it is not considered a criminal matter, but a civil matter.

Senator Richardson asked how do they discover when someone is taking the funds? **Mr. Aldridge** stated it comes in a variety of ways, sometimes it is the senior citizen, other family members, banks, or the Commission on Aging. **Senator Richardson** questioned if the bank discovers this type of activity occurring, who do they contact? **Mr. Aldridge** stated the commission agency, law enforcement, or in smaller towns they will advise family members. **Senator Richardson** inquired if this becomes a criminal law, what would be the penalty? **Mr. Aldridge** answered if it caused bodily harm or death it would be considered a felony, punishable of imprisonment of ten years or a fine of up to twenty-five thousand dollars.

Chairman Darrington asked if the one thousand dollar threshold was consistent with grand theft? **Mr. Aldridge** stated that it was consistent.

Senator Hill questioned if this would change state law because there may be one group of law enforcement in the Idaho Falls area that has their own interpretation of the law, or is this a statewide problem? If so why hasn't it been brought up before? **Mr. Aldridge** responded this is a statewide and national problem.

Senator Burkett questioned why the term "improper" was used and what did it add to the legislation? **Mr. Aldridge** stated that term was used to cover as many circumstances as possible.

Sarah Scott, Idaho Commission of Aging, stated quite a few of these cases go through adult protection. Some of the problems that occur within the family unit are dismissed as a civil matter, and Ms. Scott believes that criminal prosecution is the only answer to deter individuals from taking advantage of vulnerable adults.

MOTION:

Senator Kelly made a motion to send H 442 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 501

Relating to Address Confidentiality for Victims of Violence.

Representative Shirley Ringo explained H 501 will provide address confidentiality for victims of violence.

Liz Brandt, Law Professor, Boise State University, voiced her support for this legislation. She stated it will provide protection for victims of domestic violence, and it establishes a mechanism so that victims can use a generic address established by the Secretary of State on all official public documents. Professor Brandt explained the generic address will make it difficult for the perpetrator to find the victim from a public record. H 501 only applies to public records, so individuals participating in the program will have to manage the private entities they do business with or receive mail from. In order for an individual to apply for the address confidentiality program, they must already have a certified domestic protection order or an order of protection.

Chairman Darrington questioned if the Secretary of State has voiced his opinion in this legislation? **Tim Hurst**, Election Division, Secretary of the

State, replied yes, it had been reviewed and was considered “good public policy.” **Chairman Darrington** asked how many protection orders are in the State of Idaho? **Professor Brandt** stated she was unsure, however, the program participation figures fifteen hundred to two thousand individuals. **Chairman Darrington** inquired if it was the intention of the court to notify individuals of the possibility of getting on the list or an advocacy group? **Professor Brandt** stated it could be either one, however, initially notification will be from the advocacy groups.

Senator Burkett asked if there was anything in this legislation that prevents every individual that has a certified domestic protection order or order of protection from applying for the address confidentiality program? **Professor Brandt** responded there is no deterrent in the bill or limitation on who can participate other than the inconvenience of participating in the program balanced against the risk that they face for the disclosure of their identity.

Senator Hill inquired if the addresses the Secretary of the State provides are real? **Professor Brandt** answered the Secretary of State provides a “fake” or “dummy” address.

Senator Kelly questioned if the victim could use the Secretary of State’s address for a gas bill or visa bill? **Professor Brandt** stated generally “no,” the victim would have to work out those details with private communications or get a post office box. **Senator Kelly** asked why the individuals could not get a post office box to begin with? **Professor Brandt** responded state law requires the individual to list a physical address in order to qualify for benefits, such as welfare or food stamps.

Senator Burkett questioned how the definition of “program participant” fits into the legislation. **Professor Brandt** replied the “program participant” definition reiterates the requirements to participate in the program. So the only individuals able to participate in the program have obtained the order of protection or a certification from the prosecutor that they have been a victim of one of the enumerated crimes.

Fran Halstead, Boise resident, victim of twenty two years of violence, spoke in favor of this legislation. Ms. Halstead gave her testimony, she stated she was not able to live in one place longer than two years, and the shortest time was three months. She could not own anything in her own name for fear that he would locate her as he tried to have her killed while he was in prison for kidnaping and torturing her. When she resided in California there was a pilot program called WEAVE, Woman Escaping a Violent Environment, and they would provide a home in another town to live in for one month and then another town and home, and so forth.

Chairman Darrington questioned if she would have preferred the protection of the state beyond the protection of an order? **Ms. Halstead** responded definitely, and if they had some sort of an ID card with the address of the Secretary of State that would alert a police officer of their victim status.

Carl Hulquist, Active Citizen, also spoke in support of H 501.

Representative Trail included in his closing remarks all individuals that participate in the program will have the Secretary of the State's mailing address on their drivers license. Also this will be good public policy to protect the victims of domestic violence.

MOTION: **Senator Hill** made a motion to send H 501 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 587 **Relating to Judges, Justices; Salaries.** **Patricia Tobias**, explained this legislation would change the annual salary of justices of the supreme court, judges of the court of appeals, district judges, and attorney magistrate judges beginning July 1, 2008. The annual salaries would be increased by three percent.

MOTION: **Senator Burkett** made a motion to send H 587 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 17, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order.

MINUTES: **Senator Burkett** made a motion to approve the minutes of March 3, 2008 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Richardson made a motion to approve the minutes of March 10, 2008 as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 18092 **Relating to a Senate Joint Memorial.** The Senate Commerce and Human Resources Committee by unanimous consent request that RS 18092 be introduced for print.

MOTION: **Senator Lodge** made a motion to send RS 18092 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 541a **Relating to Crimes and Punishments and Violations of No Contact Orders.** **Heather Reilly**, Idaho Prosecuting Attorneys Association, explained H 541a will enhance penalties for repeated violations of a valid no contact order. A felony may be charged if an offender violates a no contact order for a third time within five years.

Chairman Darrington asked Ms. Reilly if, in her experience, judges issue no contact orders lightly. **Ms. Reilly** stated in her experience judges take no contact orders very seriously, however, they will err on the side of caution in order to protect a victim from further offenses and will issue no contact orders in the majority of violent crime cases.

Chairman Darrington asked if there was any justification for an individual to violate a no contact order issued by a judge that the offender had agreed to and signed. **Ms. Reilly** responded the only justification

would be if the victim named in the no contact order needed emergency medical attention and the defendant was the only person available to render aid. **Chairman Darrington** inquired if a violation of the no contact order would be a violation of the law? **Ms. Reilly** stated that it would.

Senator Jorgenson questioned if a person is charged but not convicted would they be subject to the end result of this legislation. **Ms. Reilly** replied that could potentially happen if a no contact order was issued when the person was charged with one of these violent offenses. Between the time of the incident occurring, the person being charged, and a jury or court trial which can be some months later, the no contact order could be issued and be valid. All of the unresolved violent crime charges would have to proceed through the court system. Before a second or third offense could be charged there must be a guilty plea or verdict on the no contact order violation charge. **Senator Jorgenson** asked if a person is charged with violation of a no contact order, but then is not convicted, would they still be subject to the potential of a felony? **Ms. Reilly** stated if an individual has been ordered not to contact a victim, but then knowingly violates the court order and is found guilty by a jury or enters a guilty plea two times and then does it again within a five year period, then yes they can be punished under this penalty.

Senator Davis inquired why the court could not enforce the law as a contempt of court. Why wouldn't that be an adequate enough remedy? **Ms. Reilly** responded they could. As a matter of fact, in the context of a protection order, prior to the creation of misdemeanor penalties for a violation of protection orders, all the court had was contempt of court. If the only penalty was criminal contempt, the maximum penalty would be five days in jail and/or a fine of up to five hundred dollars. When this statute was enacted it was decided that a violation of the no contact order would be considered a separate crime and in the context of these violent offenses contempt of court was not enough. **Senator Davis** questioned if the order has been entered by the court pursuant to a court rule instead of by statute would they still have the remedy available to them to charge them with a crime. **Ms. Reilly** stated she believed so, and the distinction between Court rule and statute has to do with bondable offenses.

Fairy Hitchcock, Hitchcock Family Advocates, spoke in opposition to this legislation. Ms. Hitchcock said she believes no contact orders were handed out to individuals unnecessarily and she herself had been in violation of a no contact order. She felt as though individuals could be charged unfairly with a felony through a no contact order that was not justified.

Chairman Darrington asked if she believed no contact orders are issued with a lack of good reason. **Ms. Hitchcock** stated many times they are.

Senator Burkett questioned if she had ever plead or been found guilty of violation of a no contact order. **Ms. Hitchcock** stated that was

questionable.

Robbie Barrutia, Idaho citizen, spoke in favor of the legislation. Ms. Barrutia recounted first hand experience with her daughter's abusive husband. If this legislation prevents one more victim from suffering then it is good. This legislation will put an end to habitual re-offenders. Ms. Barrutia stated it was not an easy task to obtain a no contact order even after verbal and physical abuse as endured by her daughter. The court does a reasonable amount of research before a no contact order is issued.

Senator Richardson questioned if this legislation would have helped prevent what her daughter endured. **Ms. Barrutia** stated currently it would not, but if the offender re-offends it will send him back to prison and therefore protect the victim.

Diane Anderson, Idaho citizen, spoke in opposition to the legislation. She said current no contact orders do not allow exceptions and they are issued at a mere allegation.

Chairman Darrington questioned if Ms. Anderson disagreed with the numbers provided by the prosecuting attorney on the numbers involved in a no-contact order? **Ms. Anderson** stated she disagreed. **Chairman Darrington** asked if the key point in Ms. Anderson's testimony is that the judges that issue the no contact order are unfair and incompetent. **Ms. Anderson** responded that she believed judges issue the no contact orders to protect themselves against potential lawsuits.

Ms. Reilly stated this legislation is enhancing the penalty for an offender violating a no contact order for the third time.

Senator Davis said the order is more similar to an order to show cause that would be binding upon the person it applies to unless they specifically request a hearing which is the due process afforded to them. What if the court fails to give them a hearing in fourteen days as promised? Have there been any appellate decisions that test the constitutionality of that concept and whether or not it provides opportunity to be heard? **Ms. Reilly** stated she was not aware of any court rulings that indicate that due process is lacking in that area, and she was not familiar with any courts that have not complied with a hearing being set within fourteen days. **Senator Davis** questioned if she had been aware of any order on the Anderson case. **Ms. Reilly** replied she was not.

Senator Kelly questioned if the fourteen day request for a hearing was for the victim, not the defendant. **Ms. Reilly** stated that was correct, because the victim is not a party. She said the defense can file a motion to modify the no contact order at any time and provide the five day notice that is required. The court may or may not decide to hear it, but the defendant and defense attorney are parties to the litigation along with the state and have standing to file motions as distinguished from a victim who is not a party, and therefore a court rule was promulgated in order to give victims the ability to file motions to modify no contact orders.

MOTION: **Senator Richardson** made a motion to send H 541a to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senator McKague** voted **Nay**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Jennifer Novak
Assistant Secretary